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BY THE HOUSE OF DELEGATES,

JANUARY 10, 1872.

Read, and 50 copies ordered to be furnished to each member.

By order,

MILTON Y. KIDD,

Chief Clerk.

MESSAGE

OF

HIS EXCELLENCY,

GOVERNOR ODEN BOWIE,

TO THE

General Assembly

OF

MARYLAND,

At its Regular Session, January, 1872.

ANNAPOLIS:

S. S. MILLS, L. F. COLTON & CO., PRINTERS.

1872.

MESSAGE.

Gentlemen of the General Assembly of Maryland:

During the interval since the last General Assembly convened, the State has enjoyed a reasonable degree of prosperity, and by the increase and efficiency of her works of Internal Improvement, and the augmented business they will induce, has been laying the groundwork upon which to make rapid progress in the by no means distant future.

Since the adjournment, one of the most distinguished Senators, who, if living, would to-day be occupying the seat he had ably filled for several sessions, has passed away; and his absence, caused by a prematurely early death, will sadden your reunion, and cloud the otherwise pleasant retrospect.

It is meet that on the commencement of your duties, while bowing with humble submission to this decree of Providence, you should recognize with devout and reverent hearts the great mercies it has vouchsafed to us as a State and people, and invoke for your deliberations the guidance of Him, without whose wisdom and blessing your labors cannot enure to the benefit of your constituents.

FINANCES OF THE STATE.

The receipts for the fiscal year ending 30th September, 1871, were	$2,672,998 78
Balance in Treasury September 30th, 1870	492,750 17
Total	$3,165,748 95
The disbursals during the last fiscal year, were	$2,713,502 05
Leaving in Treasury October 1st, 1871	$ 452,246 90

The decrease of $329,091.88 in receipts between the fiscal year 1869, after which my last Executive Message was submitted, and the fiscal year 1871, prior to this, is owing to the less amount of Defence Loan issued.

The decrease in disbursements between the same two years, is $290,799.13, caused by the less amount of bounties paid.

Of the disbursements in the last fiscal year, $186,210 were investments in the Eastern Shore Railroads, and $87,500 in the Baltimore and Potomac Railroad.

The aggregate debts of the State, for which interest has to be provided, were, on 30th September, 1871	$12,436 718 68
The State holds as an offset, what are considered by the Comptroller's Report Productive Assets	$ 7,718.425 94
Leaving the State debt	$ 4,718,265 74

greater than her estimated productive assets.

But, supposing that the State may lose one million of dollars, estimated among her productive assets, of the large sum due from accounting officers, incorporated institutions, &c., we have this debt increased that amount.

To cover this excess of, say, $5,718,265.74, the State has present unproductive assets, $20,577,169.56, or nearly four times the amount of her debt above her productive investments.

How sound the financial condition of the State is, will be seen when it is mentioned that of these temporarily unproductive assets, $19,330,959.73 are in the bonds, stock and interest of the Chesapeake and Ohio Canal, which for nearly a quarter of a century having been looked upon as almost worthless, has shown by its returns within the two last years, that with similar results in the ensuing eleven, the State will begin to be in the receipt of

nearly, if not quite half a million of dollars yearly revenue from that source. Another $1,012,274.40 of the unproductive assets is invested in the Annapolis and Elkridge, and the different Eastern Shore Railroads; which latter, being now nearly all completed, will soon be making returns, and can be held as investments; or, with the Annapolis Road, the State's interest therein well sold.

But further, the Baltimore and Ohio Rail Road is in debt to the State for moneys withheld, and difference of exchange between currency and coin, in cases already and to be decided by the Courts, more than half a million of dollars in excess of the Comptroller's estimates of its debt, which, when paid, should go to the immediate reduction of the debt incurred by the State for works of Internal Improvement.

As the net earnings for the year 1871 of the Chesapeake and Ohio Canal alone, of the unproductive investments of the State were greater than the interest upon the excess of the State debt above her productive assets, it might be said, with literal truth, that the State had no debt beyond her ability to pay by a present disposition of her investments.

The debt was actually reduced during the last fiscal year, $1,050,073.24. But this was done in accordance with the suggestions in my last message, by the exchange of $437,206.37 of Preferred Stock of Baltimore and Ohio Rail Road Company, for an equal amount of State Stock, as authorized by Section 7, Article 12, of the Constitution, and by the sale of $500,000 of the common stock of same Company, as authorized by Act of 1870, chapter 275, on which we realized a profit of $177,601 above its par value. These sales and transfers aggregate $1,114,807.33,

and the difference between this amount and the $1,050,-073.24 of reduction of debt, amounting to over $60,000, is in the hands of the State Agent, applicable to a further reduction of the debt.

Submitting this very satisfactory statement to you, I have only to recommend under this head:

1st. A continuance of the retirement of the Public Debt, as suggested in my message to the last Assembly.

2nd. The passage of a law at this session requiring the moneys now and to be decided by the Courts to be due the State by the Balto. and Ohio Rail Road, amounting to nearly a million of dollars, and which, under a heading treating of the subject, I have recommended summary process to have collected—to be devoted immediately to the payments of the debts which have already matured.

The amount will be more than sufficient to entirely wipe out the matured debt of 1865, and probably that also of 1870. Let us by all means pay off what debts have matured before incurring others, or wasting money because of an overflowing treasury.

3rd. A cancellation of the Sinking Fund to the extent, at least, of what is invested in currency, 5 per cent. stocks, and Maryland Defence Loan, which is much above par. The only other investment the State has in the Sinking Fund, is $154,550 of Baltimore City Stock, and as this is not at par, and pays its interest regularly, I would not advise its sale. This cancellation, beside reducing the nominal debt, actually saves the State, on an average, four and a-half per cent. on expenses of collection of interest levied by the counties.

Lastly. A proper moderation in legislative appropriations, in which there is a growing tendency to excess.

Your attention cannot help being attracted to the large

amount of over three millions of dollars, reported by Comptroller as due from incorporated institutions and public officers. This should not be, and while I speak of incorporated institutions elsewhere, I cannot too strongly urge in this connection, the passage of a law making it a criminal offence for any public officer to retain money in his hands due the State, beyond the time now prescribed by law for the payment of the same into the treasury; and that the Courts of the city of Baltimore, and the several counties, be required to give the said law in charge of the Grand Jury at every term.

EDUCATION.

The Free Public School System has made satisfactory progress during the last two years. Whether we consider the number of children that have been brought under instruction, or the amount of money that has been raised by local taxation for school purposes, the unavoidable inference is, that the system has greatly increased both in usefulness and popularity. The changes which the last General Assembly made in the existing School Law—most of which were suggested in my last message—have proved, so far as they have been put in operation, to be valuable improvements. One of the most important was the creation of a State Board, with power to interpret and enforce the law. This measure has removed the great reproach against the system of 1868—that it was without a head; it has also given confidence to the people, and has been an especial aid to school officers in executing the provisions of the law.

One of the amendments introduced into the law of 1870, while the bill was under consideration in the House of Delegates, has not yet been subjected to the test of experience—that by which the number of School Commission-

ers in the several counties is lessened, and the appointment of them confided to the Judges of the Circuit Courts. It can hardly be doubted but that this feature also will in time commend itself to popular approval. Experience has proved, that when the election of school officers took place at the same time with the election of political candidates, the interests of education were made subordinate to those of politics; but when the election took place at a different time, it failed to create sufficient interest to elicit a full expression of opinion. It seemed, therefore, to be a necessity that the elective should give place to the appointive system. And where could a trust, so vital to the interests of the community, be placed with greater safety than in the hands of a pure and honorable judiciary; who, being distributed among the several counties, have sufficient local knowledge to guide them in making a proper selection of men, and are known to be incapable of acting from any but disinterested and patriotic motives?

Notwithstanding these and other less important alterations, the system is, in all its essential features, the same as it has been for years. The changes have neither been so radical nor so sudden as to interfere with its natural and healthy growth. The people are gradually becoming accustomed to the system, and the system is by slow but sure degrees accommodating itself to the wants of the people. These are the only conditions that can ensure usefulness, popularity and permanence. If, therefore, the General Assembly should think proper to modify the law in any particular—and it cannot be denied that it might be modified in some points with advantage—it is to be hoped that it will be done in a cautious and conservative spirit, making no organic change, but merely such minor adjustments as experience may have shown to be both desirable and necessary. That which is put on, may be put

off; but a system which grows with the wants and wishes, and in accordance with the habits of the people, has a better guarantee of permanence than any legislative enactment, or any constitutional provision can confer. Following in this path, we may presume that the career of our schools will be onward and upward, encompassing within their benevolent embrace a constantly enlarging circle of youthful students, and carrying each successive generation forward to a higher plane of moral and intellectual development.

The Board of County School Commissioners in each county is responsible to the people for the success of the school system within that county. This responsibility would seem to imply that they should have the selection of the agents who are to operate under their directions, namely, the teachers. The present law fails to give this power to the County Board, though it requires them "to perform such other duties as may be necessary to an efficient administration of the Public School System." I therefore recommend that the appointment of teachers be vested in the several Boards of County School Commissioners.

The law rightly provides that no teacher shall be employed who does not hold a legal certificate of qualification. In order to be consistent, it should also provide that every County Examiner should hold a teacher's certificate of the first grade.

There is still, in many counties, a great lack of good school-houses and good furniture. The school funds, derived from various sources, are either insufficient, or are barely sufficient to pay the current expenses—leaving no margin for building purposes. I recommend the passage of an Act authorizing the County School Commissioners to levy, in their discretion, a county tax, not exceeding—

cents in the hundred dollars, to be appropriated exclusively to the erection of school-houses and the purchase of furniture.

The Normal School, as an essential part of the Public School System of the State, claims a share of your attention. It has been held for six years in a rented hall, which, owing to the expansion of the school, has become entirely inadequate to its wants. The lack of a suitable building limits its sphere of operation, retards its progress, and cripples its usefulness. That under such disadvantages it has succeeded so well in fulfilling its mission, and that it has acquired and retained the confidence of the people of Maryland, constitute its best claims to the liberality of the State, and is a marked tribute to the worth of its principal, Professor Newell. In providing for such a building as the necessities of the school and the educational interests of the State demand, it is worthy of inquiry whether provision might not also be made, under the same roof, for such public offices as the service of the State requires in the city of Baltimore.

The Colleges, which receive their principal support from State appropriations, were never in a more promising condition than they are at the present time. It is a matter of just pride to the citizens of Maryland, that not only the rudiments of learning, but the benefits of a collegiate education are placed within the reach of all her sons, "without money and without price." St. John's College and the Agricultural College are practically free to all; for, although the number of free scholarships is nominally limited, yet the limit has not yet been reached, and no deserving student, properly recommended, has been refused admittance. The General Assembly will no doubt continue to these institutions that generous aid to which their present prosperity is due, and without which they must sink into

insignificance. In order to be effectual, the stream of State generosity must run from a perennial fountain, and not as in the past, an intermittent spring. Had the liberal policy with regard to higher education, which the State inaugurated in 1784, been continued to the present time, we might have had within our own borders a rival to Yale or Harvard.

The High Schools and Academies, which ought to form the connecting link between the Common Schools and the Colleges, have not of late years received so much attention as their importance demands. Every county receives a certain annual donation, originally intended for the support of these advanced schools. In some places this donation has been diverted into the common school fund; in others, it is used for the support of schools, little, if at all, above the grade of the District Schools; in some few instances it is applied in strict accordance with the original design, and is producing good results. This whole subject deserves the close scrutiny of the General Assembly, and if possible, there should be a reconstruction on the following basis:

There should be a High School in every county, or at least one for two adjoining counties, in which youths could be prepared for entering the Freshmen Class at College. Admission to these High Schools should be on the condition that the candidate for entrance is thoroughly versed in the branches taught in the Primary Schools. The various Academic donations should be used for the support of such schools exclusively.

The public money should be disbursed under public control, and by the proper officers.

The policy of supporting private schools and sectarian institutions from the public treasury, should be abandoned.

The total amount of school taxes paid by the colored people, is set aside for the support of colored schools; but this amount is so small as to be practically worthless. Even when supplemented by additional donations from the school funds, it did not reach, in 1870, the sum of five thousand dollars. The kind and generous feeling entertained in this State for the colored race, who have been reared among us, and who, in their changed condition of circumstances, have conducted themselves, as a rule, with marked propriety, will dictate that the opportunity of at least a rudimental education should be afforded them.

IMMIGRATION.

The efforts made in the last few years to direct Immigration to Maryland, have been so ineffective as almost to discourage me from again asking your attention to the subject. But it is a matter of too much importance to the State to be lightly abandoned. I cannot but think that the last Legislature made a great mistake in failing to continue the Department of Labor and Agriculture before its machinery had gotten fairly into operation. Its workings, under the able and earnest Commissioner and Deputy, were just beginning to be productive of far better results than I have been able to see any hope for since.

Without some organized effort and Bureau to direct Immigration here, we cannot hope to divert its flow from the Western States—where its current has long been set—against their well directed exertions to secure it.

That Immigration is *a necessity to the agricultural interest in Maryland*, under the changed condition of labor, I will not stop to establish. This conceded, as it must be, the question is with you how to attract it. Favoring the expenditure of as little as practicable of the

public money for special purposes, and believing that the success of public enterprises can be best subserved by those general principles which insure success in private business, I cannot endorse the suggestion made in the Convention held in Baltimore, of an appropriation of two hundred thousand dollars from the State Treasury.

A far smaller sum, judiciously expended, under proper authority, in dispensing information, will convince the immigrant that Baltimore is his desired haven. Nothing will go so far to do this as the knowledge, that beside its advantages as a port over other cities, we have a pure and economical State government; that State taxes are small, if any, and levied only for wise purposes; and that only local expenses will have to be provided for. Let them know that we have free railroads, so far as the right to build railroads anywhere in the State, *but not free from taxation* to the increase of taxes upon their little property; that we have free schools and good schools; and that in the march of improvement more attention is being paid to such practical necessities as good roads as well as good schools.

One great incentive to immigration would be the establishment of colonies, as nucleusses around which the immigrants would cluster, and thence be distributed more generally. It seems to me that it would be greatly to the interest of our railroads to establish these. Although we might not legally require existing roads to set apart a small per centage of their net earnings for the purchase and improvement of tracts of land along their lines, to be rented or sold to these new comers, the present railroad law might be so amended as to make it a condition precedent to new charters.

There are, along the lines of every railroad of any

length in Maryland, vast tracts of land that can be bought far below their actual value, and at almost nominal rates. If these were taken by the railroad companies to the amount even of a fractional part of one per cent. on their net earnings, parcelled out into villages or small farms and fruiteries, moderately improved, and leased or sold on credit, payable in yearly instalments, with proper facilities of transportation afforded to mechanics, gardeners, truckers, dairymen, &c., the waste places of Maryland would be filled up with an industrious population, our labor supply greatly augmented, and in return the railroads would derive great profits in enhancement of their lands so bought and improved, and the largely increased trade and travel induced.

How potent the attractions of home and kindred, and company for strangers in a strange land, would these settlements or colonies present?

One of the causes which will contribute greatly to our success in securing immigrants, if other proper measures are devised, is the line of steamers plying directly between Baltimore and European ports, sending out the largest number of immigrants. These people have heard of our free government, where freedom of religion, freedom of occupation, and the pursuits and objects of life are before them, and open to all. But they have also heard of our vast domain and boundless Western prairies, where farms are cheap and labor scarce and high, and thus the West has presented attractions to them as the land of promise and the goal of all their hopes and aspirations.

This is the *old* story, with which they were all too familiar to be diverted from their original destination in the days of slave labor, and spurred on by agents of large railroad corporations, they hurry as fast as steam and rail can carry them to join their friends who have preceded.

They must be made acquainted with the PRESENT state of affairs. When they learn that Baltimore has advantages for them over any other large port of entry; that they get increased comfort at less cost by our lines of steamers; that they will be better cared for in Baltimore than in New York; that engagements await them here at good wages, that farms are comparatively as cheap now within twenty miles of the great city of Baltimore and Washington, the capital of the nation, as in the far West; that our soil is as fertile and more easy of culture, our climate more temperate and salubrious, our health much better, our agricultural productions more varied, our mineral products unequalled, our railroad and water facilities unsurpassed; that we have everywhere public schools and places of worship of every denomination open to them; that all these advantages are offered with low taxes; and that above all, they will receive a hearty welcome from a resident population, a nobler than which does not live in any land; they will come to us, and stay, and identify themselves with us, and aid in making our future prosperity and pre-eminence as great as the most ardent lover of our State could wish.

DISPUTED BOUNDARY BETWEEN MARYLAND AND VIRGINIA.

For two centuries a question of unsettled boundary has existed between Maryland and Virginia. At first, the interests involved being unimportant, probably no effort was made to settle the line, because of the difficulty attending in consequence of the Colonial Records of Virginia having been removed to London, after Bacon's Rebellion, by order of the Crown.

But what was comparatively unimportant two hundred years ago, has become of grave consequence now, not so much because of the land territory involved, as of the

wealth of the waters in dispute. There is in this portion of Maryland, a hardy, brave, resolute class of citizens, whose chief occupation in season, is that of oystering.

They, having previously complied with State law requiring them to take out license to oyster, and their ancestors, from time immemorial, having been accustomed to fish these waters, are naturally retentive of what they believe to be their rights.

Claiming these under the "compact" of 1675, between Maryland and Virginia, and to the channel of the Pocomoke River or Sound, as appurtenant to the ownership and jurisdiction of Maryland, they insist upon plying their vocation in these disputed waters.

But the State of Virginia, claiming them as within her confines, in the enforcement of her rigid oyster law, arrests of Maryland citizens are frequently made by her Oyster Police Force, and serious conflicts sometimes ensue.

The most serious of these occurred in the Autumn of 1870, when a large number of vessels and their crews were captured by the Virginia authorities and taken to Drummondtown, Va., where the crews were imprisoned. They having made their escape to Maryland before I could interpose, and earnest threats being made of an attempt by an organized force to recapture the vessels, they were removed to Norfolk and dismantled.

I immediately communicated with His Excellency, the Governor of Virginia, and he to the Virginia Legislature then in session.

Although matters had been much complicated, and bad feeling engendered by the forcible escape from jail and return to Maryland, the Governor and Legislature generously responded to my appeal, restored the vessels, and abandoned any further legal proceedings in these cases.

In return, I pledged the oystermen of Maryland not to cross the line which had been previously agreed upon between Captains Davidson and Lovitt, the commanders of the respective State Oyster Police Forces, until the question could be examined by the State Commissioners. To the honor of these oystermen, I am glad to say I have heard of no infraction of this pledge of mine, and I have recently had the same assurance from Gov. Walker.

The State of Virginia appointed a Commission of three of her most eminent citizens, headed by Ex-Gov. Wise, made an appopriation to defray expenses, and sent one of the Commission to England to obtain such Records as were necessary to establish the claim of that State.

I did not feel authorized to appoint any Commissioners, but the General Assembly of 1868 having appointed such a Commission, consisting of Attorney General Jones, Honorables L. L. Waters, and Wm. J. Aydelotte, and they not having reported results to the succeeding session of 1870, as seemed to have been contemplated by the Act of 1868, I requested them to continue to represent the State until the matter could be settled, or the Legislature convene.

They have not reported to me, but doubtless will to your honorable bodies.

I cannot too strongly urge upon you the necessity of taking such steps as your wisdom may suggest to settle at once, and forever, this vexed question. Nothing but the considerate and conciliatory course pursued by the authorities of the two States, and the perfect accord of friendship and sisterhood which has always existed between Maryland and Virginia, prevented a serious outbreak, and probably much bloodshed on this occasion; and something must be done to prevent a recurrence of such incidents.

It is an act of pleasure and of duty to express my thanks to the Governor of Virginia, for the manner in which he co-operated with me in the temporary adjustment of this important question, and which, doubtless, had much weight with the Virginia Legislature.

PENITENTIARY.

Having received the Report of the Directors of the Penitentiary at so late a day, because of their fiscal year ending only on thirtieth of November, and the subsequent time necessary for its preparation, I can do little more than refer it to your consideration.

The improvements spoken of in the report were imperatively demanded for the comfort, safety and health of the prisoners, and I have satisfied myself, by a personal inspection, that they have been well and economically done —are sufficient for the demands of the Institution for many years; and, so far as the number of inmates is concerned, let us hope, as long as they may resist the ravages of time. You will not, I am sure, hesitate to make an appropriation to pay for their erection.

As only a portion of the report has yet been submitted to me, I have not the tables to refer to for the number released by Executive pardons within the last two years. But a recurrence to my last message, and the Penitentiary Report for 1869, will show that the number pardoned by me in that year was very much smaller than the average of several preceding years, in which the pardoning power had been exercised by my predecessors. I have conformed to the same policy in the two past years—pardoning only such cases as I was satisfied were really meritorious, or where I was assured, by medical advice, that the life of the prisoner was endangered by further confinement. Pulmon-

ary affections are exceedingly liable to be developed by imprisonment, and in several cases I have released the sufferers, that they might die among their friends, rather than within the prison's walls.

Although the constant and imploring appeals for Executive clemency are very hard to resist, I cannot endorse the suggestion of the Penitentiary Board that the Governor be deprived of the pardoning power.

Apart from its being a Constitutional prerogative of which the Legislature cannot divest him, it is necessary and proper to be exercised by some official. To whom else could it with more propriety be delegated? Or would any one be more likely to exercise it judiciously, or to resist unworthy appeals, than he who, honored with the highest office in the State by the peoples' suffrages, is sworn to execute the laws faithfully?

But, whilst I would not advise the withdrawal from the Governor of the pardoning power, I would strongly recommend the passage of an Act to abridge length of sentence for good behavior, and leave its exercise in the hands of the Directors and Warden.

Its effect would unquestionably be most salutary in promoting good conduct and industry among the convicts.

The question of prison labor is a most perplexing one. Government has its obligations to its virtuous and toiling citizens, as well as its vicious and criminal. And while no one would consign a convict to a term of enforced idleness, with no resources of occupation or reading, few would willingly, by the results of convict labor, render precarious the support of the toiling artisan's family, often difficult enough under the most favorable circumstances. Nor, on the other hand, could the State be expected to be at the enormous expense of maintaining seven hundred or more idle and criminal consumers, rather than make them mea-

surably self-supporting producers. The theory, too, that imprisonment is intended to be reformatory, as well as punitive, requires that the convict, during confinement, shall be taught to be a more useful and better member of society, through the instrumentality of a trade learned, and habits of industry and sobriety acquired.

There must, then, be a conservative mean between the two radical extremes of entire idleness, or overproduction and competition with honest free labor. This, it strikes me, can only be accomplished by prohibiting the manufacture of any article as a *specialty* in the Penitentiary which is made to any extent by our own citizens—that as many branches of manufactures as possible be established in the Institution, and that in none shall over a certain proportion of the convicts, to be scaled by the number of inmates, and the different branches of manufactures be employed. I would also recommend that the whole subject of prison labor and discipline be referred, early in the session, to a Committee of the two Houses, who shall have ample time to investigate this most important and interesting subject, and submit their deliberations for your consideration.

I would suggest, in this connection, for your consideration, whether it would not be an economy to the State, a benefit to the convict, and aid greatly in the solution of the question of prison labor, were the laws to be changed so as to punish trivial offences by requiring the criminal to work upon the public roads of the county in which he may have been convicted, rather than by imprisonment?

Certainly, in many of the counties, by this system, the roads, which so sadly need it, would be greatly improved at diminished cost. It would be necessary to establish a road system suitable to its workings, and the prisoners already in the Penitentiary for small crimes,

might be handed over to the county authorities, on its organization, to make the force sufficiently large to be profitably worked.

There need be no difficulty in perfecting such a law, as the prisoners could be worked under proper guard, and the direction of a Road Engineer, and any attempts at escape provided against by reducing the sentence for good service, and doubling it for attempting to escape, or upon recapture.

By this, the great expense of maintenance in idleness would be saved the State, competition with mechanical labor avoided, and the county more than paid for his support by the service of a useful laborer. That it would be much better for the health and happiness of the prisoner, in most cases, cannot be questioned.

If you shall deem this suggestion worthy of trial, I would advise, as auxiliary to the plan, another law, giving Magistrates jurisdiction in trifling cases. Much expense would be saved to the counties for imprisonment prior to trial. Or, if you do not deem it advisable to dispense with the trial by jury in any case, the Magistrate might be empowered to commit the party to work with the road gang, upon the public highway, rather than to jail, pending his trial—the accused to have the right of appeal to the nearest Circuit Judge as to road service or imprisonment.

My official intercourse with the Directors and Officers of the Penitentiary, and my official visits to the Institution, have satisfied me of the earnest, disinterested and humane manner in which they have discharged their duties, without any other compensation, so far as the Directors at least are concerned, but the consciousness of a duty to society and its fallen members, faithfully and conscientiously performed.

In pursuance of Joint Resolution of the last General Assembly, "That the Governor is hereby authorized to employ additional counsel to assist the Attorney General in instituting all proper proceedings by suit at law or by bill in equity, to enforce the just demands of the State of Maryland against the Baltimore and Ohio Rail Road Company, and that the same should be instituted without delay," I engaged to assist the Attorney General in the several important suits to be brought by the State against the Company, ex-Gov. P. F. Thomas, and Messers. I. Nevitt Steele and S. T. Wallis.

After proper conference three suits were instituted.

Two of these suits have been heard and decided by the Courts in favor of the State and against the Company.

In the suit for the recovery of one-fifth of the receipts from passenger travel, in which Judge Dobbins' decision was reversed by a full Bench of the Court of Appeals, and the case sent back to the Superior Court, judgment was entered on the 1st of December last for the State in the sum of $351,290,18. As this suit was brought only for moneys received up to January 1st, 1870, and the Company still refuses to make returns to and pay into the State Treasury its one-fifth passenger receipts, suits have been brought for each six months from January 1st, 1870, to January 1st, 1872. The same principles affecting these last suits which decided the first, there can be no doubt of the result; and estimating the receipts of the past two years by the last six months for which the Company paid, it may be computed to owe the State about three hundred thousand dollars more on this account. The reduction of the fare, after Judge Dobbins' decision on December 10th, 1871, will be more than made up in the returns for

last year, by the interest which the Company will have to pay the State on its refused payments.

Of course the Company will attempt to take this case to the Superior Court of the United States. *But it will be a matter for you to decide, whether the Company, the creature of the State, shall defy the Laws of the State, as interpreted by the Courts of the State, and seek an escape of its obligations to the State from an outside tribunal.* I have, in treating of the further payment of the "bonus," in a subsequent portion of this communication, recommended summary process, to compel these already adjudicated and future payments. The eminent counsel, however, representing the State, express the opinion that the Federal Court, under its own decisions, one of which has been very lately made and reported, cannot entertain the case, but will dismiss it, upon motion, for want of jurisdiction. Still, I think, the State owes it to her own dignity and authority to enforce obedience *in her own way, if she can*, from a refractory subject, willing always to receive enormous benefits, and exclusive privileges, but never to discharge corresponding obligations.

The second suit was instituted by the State for the recovery of such sum as might be due the State for the difference between the sterling interest paid by the Company in London, and the perpetual dividend of six per centum stipulated to be paid to the State on its stock in the main stem of the road. The gist of this case will be made plain to the simplest understanding, by the statement that the State, having *incurred a debt for the benefit of the Company*, the Company claimed to pay the State the *interest in currency here, and that the State must be at the expense of conveying and paying the same interest in coin in Europe.*

The State, at the trial, contended, that under the law containing this stipulation, regarded as a contract, the Company bound itself to pay the amount in coin or its equivalent. On the other hand, the Company insisted that it was only bound to pay in currency, as other stockholders were paid, and that inasmuch as the sterling interest, payable in London, had been remitted by it at the large cost of exchange which existed during the war, the State had become its debtor for the difference between gold and paper. Its claim amounted to $290,000. His Honor Judge Dobbin decided that the law *was a contract* for the payment of a dividend in gold, and having thus settled the principle, the case was referred to Hon. J. Morrison Harris, the Auditor of the Court, for the statement of the account. After spending much time and labor in the examination of the Company's accounts, running back to the time when it first undertook the remittance of interest to London, he has at last, with the aid of one of the clerks of the Company, completed his account.

You will be gratified to be informed, that instead of the State owing the Company the $290,000 claimed by it, the Auditor's Account under the direction of the State's counsel, will show that the Company owes the State nearly $300,000 *in gold*, for which we shall claim and expect to recover judgment when the case is again reached on the docket.

In the third suit a bill in chancery has been filed, involving the proper apportionment of the earnings of the Washington Branch and the main stem between Baltimore and the Relay House. This is the case growing out of the inquiry made in my message to the last Legislature, why a change had been made since

1863 in the mode of keeping the accounts of the Company, by which its accounts were adjusted in the Company's office in the proportion of *three-sevenths to the credit of the thirty-two miles of branch, and four-sevenths of the eight miles of main stem.* The company having admitted the charge, the chancery proceeding is to ascertain whether such an arbitrary division of the receipts of the Washington Branch Road could, under its charter, be lawfully and rightfully made. Of course if this basis, upon which the Company has settled with the State in what payments it has made on account of dividends from the Washington Branch since the change in the mode of keeping its account, is repudiated by the Courts, as it doubtless will be, it will owe the State a large addition to the enormous sums it has already been decided to be in her debt. The counsel for the State, with my approval, determined not to press this last case until an opportunity was afforded them to examine the Auditor's Report in the "gold case," but as soon as possible thereafter the chancery case will be put in motion and pressed to a final hearing.

COMPENSATION OF COUNSEL.

It will be seen, from the above statement of the cases, how onerous and multiplied where the duties of the counsel in preparing and following the cases through the different Courts. In the discretion left with me by the Legislature, as to the amount of fees to be paid, I fixed the compensation of each counsel at seven thousand dollars, with the agreement, that for this sum they were to carry all the cases finally through the State Courts. If they go to the Supreme Court of the United States, the Legislature is to settle the matter of further compensation. Considering the vast amount of money involved, and which has been decided in the State's

favor, the number of suits at law and in equity necessary to be instituted and argued in the lower Courts and Court of Appeals, the great labor thereby entailed, and the eminence of the counsel engaged, I am satisfied you will esteem the compensation as moderate and reasonable; particularly as no retaining fee was paid as is customary. The fee agreed to be paid is not only very far from exorbitant, but is also very far below what a private litigant, under like circumstances, would have been required to pay.

"BONUS" TO BE PAID TO THE STATE BY THE WASHINGTON BRANCH OF THE BALTIMORE AND OHIO RAIL ROAD COMPANY.

The Court of Appeals having thus decided that the Baltimore and Ohio Company should continue the payment to the State, required by its Act of Incorporation, of one-fifth of its receipts from passenger travel on the Washington Branch, which it had resisted and has withheld for three and a-half years; and knowing the desire of the Company to be released from the payment of this "bonus," and that it would probably apply to this Legislature to release it; I addressed the following letter to the President, intending, if he had indicated a willingness to have the vast property of his Company subjected to taxation—as in my opinion, and by our Bill of Rights, *all property in the State should be*—to recommend in this communication the release of the "bonus," upon the condition of its property being so taxed:

"STATE OF MARYLAND,
"EXECUTIVE DEPARTMENT,
"*Annapolis, Nov. 2nd*, 1871.

"Hon. John W. Garrett, President Balto. and Ohio R. Rd. Co.,

"My Dear Sir:—The Court of Appeals having decided the validity and legality of the Act by which your Company is required to pay to the State of Maryland a "bonus" of one-fifth of its passenger receipts on the Washington Branch, I presume you will no longer decline to pay the same, after the Court below shall have conformed to the rulings of the higher tribunal.

"It will be necessary for me to deal with this question in my Executive Message to the approaching General Assembly.

"As the Potomac Rail Road will soon be completed, I do not desire, as its President, or a citizen of Maryland, that either road should have any advantage over the other, conferred by legislative sanction. I therefore desire to ask whether, in the event of the Legislature releasing your Company from the payment of this "bonus," you will consent that its property may be subjected to taxation, either under the provisions of the Act of 1870, ch. 362, taxing all railroads, or any other mode more acceptable to you?

"If your Company will consent to be taxed as the Potomac Road is, and as I think ALL *railroads in the State should be*, it will afford me the greatest pleasure to recommend to the Legislature your release from this bonus.

"As the printer requires that the message shall be placed in his hands early in December, to be ready for the convening of the Legislature, I shall be greatly indebted to you for the earliest possible reply to this letter.

"I am. sir, with the greatest respect,

"Your obedient servant,

"ODEN BOWIE."

To this letter I received the following reply:

"BALTIMORE AND OHIO RAIL ROAD,
"PRESIDENT'S OFFICE,
"*Baltimore, Nov. 17th*, 1871.

"His Excellency, Oden Bowie.

"My Dear Sir:—I beg leave to acknowledge the receipt of your letter of November 2nd.

"The Board of Directors of the Baltimore and Ohio Rail Road Company has taken no action in relation to the claim made by the State to the one-fifth part of the gross receipts from passengers travelling between Baltimore and Washington, since the commencement of the various legal proceedings, which were instituted during your official term.

"I am glad to know that you propose to refer to this question in your Executive Message to the General Assembly.

"It is certainly proper that the whole subject should be fully considered by that Body; and I have little doubt that it will reach a conclusion satisfactory to the people of the State. But as the Legislature, which must deal with this question, has been elected only within a few days. and cannot, until it assembles, consider the subject, I will not presume to conjecture its conclusions, nor do I feel at liberty to discuss its possible policy or action.

"I can only assure you the difference which has arisen between the State and this Company, is one which the stockholders greatly

regret; and that the Company is at all times ready to enter heartily into any just and proper arrangement for the termination of all matters now in litigation with the State.

"I have the honor to be, with great respect,

"Your obedient servant,

"J. W. GARRETT, Prest."

It will be seen by Mr. Garrett's letter, that he does not answer my question; and assuming from the evasive nature of his reply, that he will seek to escape both the payment of the "bonus" and taxation in any other form, it is my puty to urge you to yield no iota of the State's rights, or the peoples' interests. *If the Representatives of the State will not protect these, experience has shown that they will not be spared.*

The Board, through its Finance Committee, as announced in the Baltimore papers of December 10th, 1870, did "take action" the day after Judge Dobbins' decision releasing the Company from the "bonus," by reducing its fares; but did not respect the opinion of the higher tribunal, by raising them again, upon the reversal of Judge Dobbins' opinion by the Court of Appeals. Such failure to raise them, however, in no way affects the State's rights—as under the law she is entitled to one-fifth of whatever is collected, much or little.

By this reduction, did not *the Board itself* say, in so many words, that this one-fifth money had been collected *for the State?* If so, why has it not been paid into the State Treasury? Simple honesty and the decision of the Court of Appeals both require that it should have been. This question was so fully discussed in my message to the last General Assembly, and in that body itself; has been so fully decided by that Legislature and the Court of Appeals, whose decisions are so thoroughly approved by the people, that I will

not insult the intelligence or integrity of this Legislature by supposing, for one moment, that you will abate in the least the State's proper demands. The people, burdened with taxation, are in no mood to be further trifled with by this Company. They will insist that *corporations, like individuals, must be subject to the control of law, and must, with all other, and far less favored interests, contribute to the support of government.*

What would be thought if I, as a large landowner, should urge you to release the farmer from taxation upon his land, but exempt no other property from taxation, and you should adopt the suggestion? Would not a cry of condemnation go up from every other interest in the State? Yet, with the oppressed condition of the land owners generally in certain sections of the State, caused by the loss of their labor, the returns it produced, and the millions of capital invested in it, would not this be much more reasonable and just than to exempt this enormous monopoly—particularly when the land has *always* been taxed, and the railroad *never?*

Assuming, then, that the "bonus" will not be released without a tax being imposed, the question is, Can you legally impose this tax under the Company's charter, and what it claims as its vested rights? Of course, if the Company consented to pay the tax, there would be an end of the difficulty. But, as President Garrett, in reply to my letter of inquiry upon this subject, writes that his Board of Directors "had taken no action," which it could so easily have done in the two months since my letter was addressed to him; and, instead, writes in reply, that he does not "presume to conjecture" the Legislature's "conclusions, nor feel at liberty to discuss its possible policy or action," it is very clear that they will not voluntarily consent to taxation unless by do-

ing so they can be the clear gainer in some other way, such as the release from the payment of the "bonus."

I do not know that I can give any stronger arguments as to the Legislative power to impose a tax in case of releasing the "bonus" than those contained in my message of 1870, and I therefore repeat them here, as reflection has satisfied me of their correctness:

"As regards your power to impose this tax, I suppose its denial will be predicated upon that clause of the Federal Constitution prohibiting any State from passing any law impairing the obligation of contracts. The whole question is, whether the Act exempting the property is a contract binding on all subsequent Legislatures? This resolves itself into the question whether the Legislatare has the *Constitutional* right to make such a *contract?*

"The 13th Article of our old Bill of Rights, which was in force when this exemption was granted the railroad, and which has been mainly followed in all succeeding Constitutions, declares 'that levying taxes by the poll is grievous and oppressive, and ought to be abolished; that paupers ought not to be assessed for the support of government; but *every other person in the State* ought to contribute his proportion of public taxes for the support of government *according to his actual worth in real or personal property* within the State,' and that '*duties* or taxes may be properly and justly imposed.'

"This Article of the Bill of Rights did, I think, *limit* the power of our Legislature to make such a contract. It renders *all* property in the State *liable* to taxation. It does not *compel* the Legislature to tax all property. The Legislature *may* exempt churches, or grave-yards, or railroads, if it pleases, and as long as it pleases. But the *liability* to taxation always exists. As long as the property is *liable*, it is for the Legislature to say *when it will impose the tax.* In other words, the *Constitution* having expressly declared that *all* property *is* liable, the *Legislature* has no right to say that *any* is *not* liable. *Perpetual* exemption by the Legislature would be overriding the Constitution.

"But in addition to the force of Art. 3 of our old Bill of Rights, and to Arts. 15 and 41 of our present declaration, already quoted the power to *repeal* is expressly declared by Art. 5 of our present Bill, wherein it is proclaimed that the inhabitants of Maryland are entitled to the benefit * * * * of all Acts of Assembly in force on the first day of June, 1867, except such as may have since expired, or may be inconsistent with the provisions of this Constitution; *subject, nevertheless, to the* revision of, and amendment or REPEAL *by, the Legislature of this State.*'

"The decisions by our Court of Appeals affecting this question,

as far as I know, and in one of which the city of Baltimore and the Baltimore and Ohio Company were the parties to the suit upon this very question of the right of the City to tax the Company, involved only the question of *existing* laws, that were on all hands conceded to be constitutional. The constitutional question can only arise when the State *repeals* the exempting laws and subjects the Company to taxation.

"The right of taxation includes the right of exemption. The State can impose the tax or take it off whenever she pleases. But the right to tax being a *constitutional and sovereign power*, no Legislature can deprive the State of it. If one Legislature could perpetually exempt one species of property, it could perpetually exempt *all*. Suppose the case of one Legislature *perpetually* exempting *all* property from taxation: what becomes of the government which is supported by this power of taxation? The mere statement shows its utter absurdity.

"*One Legislature cannot deprive succeeding Legislatures of their constitutional rights and powers.* One Legislature can impose a tax, and a future one exempt; or one Legislature can exempt, and a future one *impose* the tax. This question was clearly and emphatically decided by our own great Chief Justice Taney, in an Ohio case, 16th Howard, page 431, where, in delivering the opinion of the Court, he says:

"'They (meaning the Legislature) cannot therefore, by contract, deprive *a future Legislature of the power of imposing any tax* it may deem necessary for the public service, or of exercising any other act of sovereignty confided to the Legislative body, unless the power to make such a contract is conferred upon them by the Constitution of the State.' Where did the Constitution confer such a power upon our Legislature? If it did not *confer* the power, the power *did not exist*. On the contrary, it seems to me the 13th Art. of our old Bill of Rights did prohibit the exercise of such perpetual power by the Legislature.

"If, therefore, it is contended that the exemption of the Baltimore and Ohio Rail Road from taxation can be regarded as a *contract*, within the meaning of the Constitution of the United States, which cannot be impaired, the answer is plain. No Legislature has the constitutional right to make such a contract of *perpetual* exemption, and therefore it is void, and in reality *no contract*.

"But suppose I am in error as to the constitutional question, and that one Legislature can make a contract perpetually exempting property which another Legislature cannot repeal. Then, certainly, the rules which apply to all other contracts apply to that. Certainly one party to a contract cannot be required to do his part when the other party refuses to perform his. If then, the Baltimore and Ohio Company does refuse to pay the one-fifth of the passenger receipts to the State, it cannot claim immunity from taxation.

"I believe it to be a well-settled principle of law, as well as of

common honesty, that a charter cannot be accepted in part—that a Company cannot receive the benefits conferred and at the same time repudiate the obligations imposed. And if, by any efforts of this corporation now made, it should be relieved of the obligation to pay this bonus to the State upon the ground that the State had no right to impose it, then equal and fair justice would demand that the State should be released from the obligations not to tax its property.

"If the consideration fails, there is an end of the *contract.* It makes no difference whether this failure of consideration arises from the refusal of the Company, or the unconstitutionality of the consideration. In either case the consideration fails, and the contract is at an end.

* * * * * * *

"In order to test either proposition successfully before the Courts, the repeal of the exempting *clauses* is absolutely necessary."

My own views, as above expressed, are confirmed as to the Washington Branch, at least, by Attorney General Jones, whose opinion I asked shortly before the expiration of his term. I regret that he had not the time to examine into the whole question as affecting the right to tax the whole property of this and other Companies.

In reply to my questions, Mr. Jones writes:

"In January, 1870, in preparing an opinion, in reply to the request of the General Assembly, upon the right of the State to one-fifth of the gross receipts from the transportation of passengers over the Washington Branch, I had occasion to examine all the Acts of Assembly relating to the Baltimore and Ohio Rail Road Company and the Washington Branch. I found in the first Act relating to the construction of this branch, (Act of 1830, ch. 158,) there was this proviso: 'Provided, that nothing herein contained shall be so construed to preclude the Legislature of this State from the imposition of such taxes as may be reasonable and just, and in accordance with the burthens imposed on other real and personal property.'

"In the opinion I had the honor to transmit to the General Assembly on the 25th January, 1870, in referring to the provisions of the Act of 1832, ch. 175, for subscriptions to the stock for the construction of the Washington Branch, there occurs this clause: 'And it was provided that the stock of this branch should be considered a separate and distinct stock forever, thus taking it out of the exemption from taxation of that Company's original stock.'

"I have carefully reviewed the grounds upon which that opinion was formed, and am entirely satisfied with its correctness. It is well settled by the decisions of our Court of Appeals, and of the

Supreme Court of the United States, that no presumption can ever be made of an intention to surrender the power of taxation by the Government, in the absence of an expressed exemption. The power need not be reserved where any franchises, or property of any description, or the right to use it in any way, are granted to individuals or corporations. The exemption must be expressed in the charter or grant, or it does not exist. The doctrine is founded upon the rule of common law, that the grant of the sovereign shall not enure to any other intent than that which is precisely expressed in the grant."

Under the head of "Corporation Returns to the Comptroller," I have called your attention to the fact that this Company, notwithstanding the boast of its President to the Commercial Convention assembled last year in Baltimore, that its capital exceeded one hundred millions of dollars, (one-fourth of the assessable tax basis of the State as returned,) and notwithstanding also the report of its President to the annual meeting of its stockholders in November last, that its earnings for the last year had exceeded twelve and a half millions of dollars, had also failed to comply with the law requiring it to make annual return to the Comptroller of the aggregate amount of its bonds and stock, and pay to the Treasurer, out of the interest due to the holders thereof, the State tax thereon.

As long, therefore, as it persists in defying the laws levying other taxation upon it, and refuses to submit to taxation upon its property, I do not see how the Legislature, in justice to the people, can release it from the "bonus" which the Courts have declared to be legal and just. If you do so, be sure in advance that you have properly protected the State's interest in any agreement you may make with the Company. Stand firmly by the State's rights, and her demands, as approved by the Courts and the Company must agree to pay its proper proportion of taxation.

In the debates in the last Legislature upon Judge Merrick's resolutions from the Committee on Ways and Means,

which some of the members opposed, because they thought the resource was unnecessarily harsh, while others believed that all the Company wanted was a judicial decision by our own Courts upon the legality of the "bonus," and others still were assured by the lobbyists of the Company that it would pay as soon as the question was decided through the milder process advocated, not one was bold enough to support the right of the Company to permanently retain the money collected, or its release from the payment over to the State after the decision of the Courts should have been made.

The difference was only a question as to the *form of procedure* to obtain a decision of the Courts. All those who believed that the Company would abide the decision, of course, and properly, advocated the milder form. The stronger was urged only because its supporters believed that it was necessary to extract the State's money from the Company's illegal grasp. I did not, in my Executive Message, then recommend the arbitrary resort to the *scire facias* process.

But I do, now that the case has been decided by a full Bench of eight of as pure and able Judges as adorn any Court, recommend and urge upon you, that if the Company shall longer refuse or fail to make the payments to the State required by law, that you authorize the Governor to direct the Attorney General, and the counsel who have so successfully conducted the case for the State, to forthwith institute proceedings by writ of *scire facias*, in the name of the State of Maryland against the Baltimore and Ohio Rail Road Company, to ascertain whether the charter and corporate franchises and privileges of said Company ought not, by reason of misuse and abuse of its franchises and privileges, and for wilful and continued violation and defiance of the laws of the State, to be vacated and annulled.

If the claim of vested rights is to excuse the payment of its fair share of taxes, and it is to have the benefit of grants unlimited by the welfare of the State, do not, by a weak surrender to a bold defiance of State law, sacrifice the taxpayer to a merciless, insatiable, extortionate monopoly. Be assured, that in the honest endeavor to do your duty to an oppressed, and, even if it prove, remediless people, you will have the approval of all disinterested and right-minded men.

I know full well that the strong position I have taken upon this question will be assailed and sought to be weakened by the charge that I am connected with another road, which will be a competing line between Baltimore and Washington, and that my motives have been influenced accordingly. I only ask you to remember, in reply, that I am urging the cause of the people against an exclusively favored interest, and that I am not urging taxation upon *one* railroad, but upon *all* railroads—that *each* should contribute its "proportion of public taxes for the support of government," to the end that State taxes may be so adjusted and reduced as to impose the fewest possible burdens on industry, agriculture and commerce.

CORPORATION AND BANK RETURNS TO THE COMPTROLLER.

I would earnestly call your attention to the provisions of Sec. 96, Art. 81, of the Code of General Laws; and to the utter disregard of its requirements by most of the incorporated institutions of the State.

By this Art. of the Code, it is made the duty of "the president or other proper officer of any incorporated institution or company of this State, which shall have issued any bonds, certificates or other evidences of debt bearing interest, for any loan contracted by them, on the first day of July in every year, to make return to the Comptroller

of the aggregate amount of said bonds, &c., and pay to the Treasurer on said day, out of the interest due to the holders thereof, the State tax thereon."

This provision of the Code, if properly enforced, would confer great relief upon other interests now and for years past most grievously taxed, whilst these plethoric corporations were entirely exempt. My own very decided views as to the justice and propriety of subjecting every interest in the State to its own proper proportion of taxation, and the exemption of none, particularly those which, then exempted, were the most able of all others to pay taxes, I tried to impress upon the last General Assembly, as I now do upon this.

With the entire taxable basis of the real and personal property of the State, not including incorporated institutions, of which we have no reliable data, four hundred and sixteen million, seven hundred and sixteen thousand, two hundred and eighty-three dollars, as per reports for 1871, we heard the President of the Baltimore and Ohio Rail Road Company proclaiming to the late Commercial Convention in Baltimore, that the capital of that Company was over one hundred millions of dollars.

What would those assembled strangers have thought of our laws, and their enforcement, if, reciting the declaration of our Bill of Rights—that "every person in the State, or person holding property therein, ought to contribute his proportion of public taxes or the support of the Government, according to his actual worth in real or personal property," and that "monopolies are odious, contrary to the spirit of a free government and the principles of commerce, and ought not to be suffered;" and informing them further of the provision of the Code, he had added: Notwithstanding, we pay no taxes on any portion of our hundred millions of capital?

Here is one incorporated institution, with a capital one-fourth that of the entire returned taxable basis of the State, which failed to comply with the law, and thus pays no tax upon its enormous capital. There are numerous other Companies which have alike disregarded the provisions of the Code; and this case is only instanced, because, from the large sum, it shows, in the most glaring light, the injustice and wrong of exempting favored interests from taxation, and the necessity of this Legislature taking proper action in the premises.*

The similar provisions of Sec. 93, Art. 81 of the Code, have also been disregarded by most of the Banks, and they too have escaped payment of taxes thus required.

Justice to the Agricultural and other interests heavily taxed, and respect for the majesty and power of the law, require that you should adopt some stringent measures for the enforcement of these laws. I can see no surer plan than to subject the presidents or other proper officers to a heavy pecuniary penalty for non-conformance; or, better still, to prescribe a forfeiture of charter for failure to make returns and payments into the treasury.

Examination has satisfied me that a strict compliance with these laws, by the various Institutions affected by them, would enable the people to be spared nearly one-half the State tax now imposed. The tax now is nineteen and a quarter cents on the hundred dollars—of which three cents is the Direct Tax, five and a half the bounty, one-half

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* As a matter personal to myself, I desire to state here, to prevent misconception or misrepresentation, that as President of the Baltimore and Potomac Rail Road Company, I made no returns of the amount of said Company's bonds, &c., because they had not, at the time required by law for the return to be made, commenced to draw interest. And therefore, in the opinion of the Comptroller and myself, sustained by the highest legal advice, are not subject to return until interest bearing.

cent the Southern Relief, one-fourth cent the Deaf and Dumb, and ten cents the School Tax. All but the School Tax could be relieved, were these Institutions held to a strict accountability. But, in any expedient adopted to test the question, I think it prudent not to remit, *at this session*, more than the direct tax of three cents. If experience shall prove that the measures adopted are sufficient to bring these Institutions under taxation, at the next session the bounty and the fractional taxes can be repealed; and the people will cheerfully pay that for educational purposes. If we firmly resolve to have no favored interests of any kind, then will the pioneer and prodigal investments, which Maryland early made in her vast works of Internal Improvements, have produced their legitimate results. The people having patiently borne these works through their struggling infancy to a maturity of great affluence, they should in their turn carry the burthen of taxation.

OTHER RAILROADS.

The Northern Central has promptly paid its semi-annual interest on the days when due, and is understood to be in a prosperous condition financially and materially.

The Western Maryland is gradually approaching its important connection with the Chesapeake and Ohio Canal at Williamsport, and completion at its Baltimore terminus. Frequent changes of administration have greatly retarded its progress, and it is to be hoped that the present able one will be more stable, and that the additional aid asked from Baltimore city will be promptly granted.

The Philadelphia, Wilmington and Baltimore is very prosperous.

There seem to be improved prospects for the building

of the Maryland Central, which passes through so beautiful and fertile a country.

The Annapolis and Elkridge has not made its usual annual report to me. But the travel and tonnage upon it appears to have largely increased, and the State ought to be receiving some returns from it.

The different Eastern Shore Roads are believed to be generally in a healthy condition, and those yet unfinished approaching completion.

The Baltimore and Potomac has been built a first-class road in every respect, and will probably be opened to travel before the adjournment of the Legislature.

Satisfactory progress is being made with the Metropolitan Branch of the Baltimore and Ohio.

I greatly regret to be unable to give any encouraging report of the Southern Maryland, but, in the interest of the country through which it passes, hope for its speedy revival.

BALTIMORE AND DRUM POINT RAIL ROAD.

Among the enterprises engaging the public attention, and which it has been the policy of the State to foster, is the project of a railroad to run from the city of Baltimore, or from one of the railroads connecting with that city, through Anne Arundel and Calvert counties, to Drum Point, at the mouth of the Patuxent River. Drum Point has long been known to the shipping interests as one of the safest and most commodious harbors in the country, and has for many years been looked upon by many intelligent merchants and shippers, as a point which would prove a valuable adjunct to the commerce of Baltimore, if connected by railroad with that city, affording as it does the deepest water, never liable to any obstruction by ice or otherwise, and within an easy run of the Capes. The

necessity also for a coal depot upon deep water, and at a point convenient to the ocean, has long been felt, and Drum Point is believed to afford the best location for this purpose.

Besides, the development of the intermediate country between that harbor and our chief city—a fine soil, especially adapted to the growth of the earliest and finest fruits and vegetables—and the convenient transportation of the valuable products of the surrounding waters, were considered very important to the full growth and prosperity of the State. These considerations led to the passage by the Legislature, in 1867, of a resolution appointing three Commissioners, one from Anne Arundel county, one from Calvert county, and one from Baltimore city, to make a survey of the route, and estimate the cost of constructing a railroad, and report upon its advantages to the State, and appropriating $5,000.00 for the purpose. Under this resolution a survey was made from a point near Millersville, on the Annapolis and Elkridge Rail Road to Drum Point, and a report made at the next session, highly favorable to the enterprise, and at the same session, (1868,) a Company was chartered under the name of the Baltimore and Drum Point Rail Road. In order to secure the means of building the road, the friends of the enterprise relied upon obtaining subscriptions from the two counties through which the road was to run, but the matter had not, it seems, been fully canvassed, and the requisite legislation was not obtained, and no organization of the Company was effected. The friends of the measure were, however, persistent in their efforts, and during the present year a very great interest in the measure has been aroused in the two counties, and in the city of Baltimore, and capitalists from New York have also entered heartily into

the enterprise; the amount of private subscriptions required by the charter to enable the Company to organize, ($250,000,) has been fully subscribed, and the Company has been organized under flattering auspices. A survey of the entire route, from the city of Baltimore to Drum Point, with a view to the prompt location of the road, is in progress and nearing completion. A sufficient degree of interest has been manifested by the people of the two counties, and Baltimore city, as to render very sure the passage of the necessary laws to enable Anne Arundel to subscribe $200,000, Calvert $100,000, and Baltimore city $300,000, to the stock of the road, issuing their bonds for the payment of the same.

Under the provisions of the present Constitution, and the Act of 1868, passed in pursuance thereof, the sum of $152,000 has been appropriated to works of internal improvement in Calvert county, and is available for this enterprise.

These several aids, if obtained, with the private subscription already secured, afford a substantial basis upon which to inaugurate the early commencement of the work, with reasonable hope of obtaining the requisite capital to complete it. It is to be hoped the expectations of the friends of the enterprise will not be disappointed. The building of the road is very essential to the full development of the wealth of the counties through which it runs.

There is every reason to induce the two counties to give their corporate aid. The increase in the value of property, in the growth of population, and development of the country, would largely counterbalance any temporary increase of taxation resulting, for the time being, from the county subscriptions. It is also to be expected that Baltimore city, with her accustomed enterprise and liberality

in behalf of internal improvements, will not overlook an enterprise for the development of a country almost at her doors, and which cannot fail to pour its wealth into her lap. Any one, who knows the country through which the road is to run, will admit that its capacity for production cannot well be exaggerated. With the road completed, there must be a rapid and gratifying career of prosperity opened to the people of Anne Arundel and Calvert. Without it their development must be very slow. In the present advanced state of human enterprise and progress, emigration will not seek a country that does not afford rapid and convenient means of travel and transportation, and this section of the State, which would be within two or three hours run of Baltimore by rail, is now, to a considerable extent, a full day's journey off, and for a portion of the year is cut off entirely from all public means of communication. That such a fine country should continue to suffer under these disadvantages, should not be allowed any longer, and every aid should be extended to this important enterprise.

It is also claimed that this enterprise will afford, in connection with steamers running from Drum Point, the most direct communication with Norfolk—lessening the time between Baltimore and that city at least five or six hours. It is further suggested, that the people of a considerable portion of the Eastern Shore will also obtain, in connection with a Steam Ferry to Drum Point, most direct and cheap means of travel to Baltimore and Annapolis.

These various considerations will, doubtless, attract to the enterprise a great deal of interest on the part of the people of the State.

CHESAPEAKE AND OHIO CANAL.

I refer to the management of the Chesapeake and Ohio Canal with peculiar pride and pleasure—pride that my anticipations of what it might be made, and my action in putting it in the way to accomplish the results which have been achieved in the last eighteen months, and for doing which, I was so severely criticised and condemned by unscrupulous opponents, more within my own party than in the opposition, have been so fully vindicated; and pleasure, as a citizen of Maryland, that this great work, in which the State has nearly twenty millions of principal and interest, has, at last, through the very agency for which I was so unjustly censured, shown that, under proper management, it will, in a very few years, have paid off its prior liens, and be making a liberal return to the State for its lavish endowment.

Having no interest in the Canal, other than that which every taxpayer of Maryland has, who is neither one of its bond or stockholders, or derives any benefit or convenience from its use as an agent of transportation, I felt that my obligations to the State required that I should give more attention to it than seemed to have been the rule with my predecessors; and investigation into its general details and resources satisfied me that what was alone wanting to make it fulfil the brightest anticipations of its earliest friends, and justify the confidence which induced the State to invest what, at that early day, was an unprecedentedly large subscription, was an administration of capacity and integrity that could and would devote its time and energies to the proper and successful management of an artery which, running from the most fertile coal fields of the world to excellent navigation, seemed only to require such attention to make it a very handsome investment.

The question then was, how to secure such an administration? The solution to the thoughtful mind, considering and contrasting the results of those enterprises controlled by the moneyed interests of their managers, whether commanded by the amount of capital they had invested, or a sufficient salary being paid to insure their efficient and undivided services, as against those where there was no direct pecuniary interest or responsibility involved, was not difficult.

In the past history of the Canal, how many of its officers have had any personal or pecuniary interest in its success? Were they selected because of any peculiar fitness for their respective duties, or because of party services, or personal favoritism? Has the President, the highest salaried officer, ever, until now, given or been expected to give his exclusive attention to this great work?

Could it be expected of any competent man, with the small salary paid, particularly when, as was generally the case, they were lawyers of large practice, or gentlemen of other large private business, living remotely away from the Canal? The answer is found in the questions.

These views, and the policy of giving the Canal stability and fixedness of purpose, by placing its administration in the hands of gentlemen, who, because of their large investments in it—heretofore and for years utterly profitless—would give their services free of compensation, except such as might result from a proper and successful management; and suggesting the employment by the Board of Public Works of a competent Superintendent for a term of years, at an adequate salary, removable only for cause, who, under sufficient bond, should give his whole time and energies, and make monthly returns to the Board, and monthly payments into the State Treasury,

there to be kept on interest to the State until disbursed by the Board, I endeavored to impress upon the last General Assembly in a special communication.

While in the main they were highly approved by gentlemen who regarded the interests of the State, and the rights of the bondholders, as more important than the use of the Canal as a political machine; some of those most learned in the law doubted the constitutional power of the Legislature to adopt the suggestions; which otherwise they favored.

But one resource it seemed to me was left to make the Canal ever remunerative to either bondholders or the State. That was to secure for it, even at an unprecedently high salary, in this State, but of no unusual occurrence in other States—where even much larger salaries, amounting in many instances, in my own knowledge, to $25,000, were paid to secure the services of properly qualified officers—a President who, with all the qualifications of experience, energy, integrity, a full knowledge of Canal management, and of marked administrative ability, would give his whole time and energies exclusively to this great work. Then to support him with an intelligent board of gentlemen of high character, representing in part the interests of the bondholders—who had first to be paid before the State could receive any returns—and in part the State itself; these last living in the counties through which the Canal passes; to abolish sinecure offices, remove incompetent officials, reduce expenses, and operate the Canal with an eye single to its tonnage and revenues, its permanent structures and generally improved condition.

The Board of Public Works, adopting this policy, after carefully considering the qualifications of other gentlemen

for the Presidency, selected the Hon. James C. Clarke as pre-eminently suited for the position. Mr. Clarke being largely engaged in lucrative business, and having even then been tendered the Presidency of an important railroad, which would not have necessitated his retirement from his own business, at a salary of six thousand dollars a year, was, with some difficulty, induced to accept.

He could not have been expected to relinquish his then engagements without receiving a salary approximating at least what his services were then commanding.

The Board of Public Works acting, as they sincerely believed, for the best interests of the State, and with the approval of the bondholders, fixed his salary at ten thousand dollars a year, upon the condition that he should retire from other business, remove his residence to the neighborhood of the Canal, and devote his entire time and energies to its management. This apparently excessive salary excited the honest condemnation of many who were not acquainted with, or did not stop to examine the considerations prompting the Board; and was availed of by unscrupulous journals and individuals as an opportunity to vent their personal and political spleen upon certain members of the Board. Conscious of the rectitude of our purpose, and confident that our action would rebound to the best interests of the State, we were content to await results to vindicate both.

These results I now submit to you, fully satisfied, that as custodians of the State's interests, they will command your approval of our action.

It must be borne in mind, that the debt having priority over the claims of the State, and which must be paid before the State can derive any revenue from the Canal, had, in a period of twenty years, under the past management

of the Company, been steadily increasing, without any pecuniary benefit or advantage whatever to the State, until the interest in arrear and unpaid amounts to double the principal, and the total bonded debt of the Company, principal and interest, had, in 1869 or '70, reached the enormous sum of four millions, two hundred thousand dollars, while the claims of the State have grown, by the non-payment of dividends on her preferred stock, and interest on her mortgage debt, to nearly thirteen millions of interest, the total principal in bonds and stock being seven millions.

The total amount of payments to bondholders made by all administrations of the Canal, *in fifteen years*, from 1854 to December 1869. was one hundred and fifteen thousand, eight hundred and sixty-one dollars and twenty-nine cents.

The amount of indebtedness paid by the present administration in fifteen months, between July 1870, and November, 1871, is four hundred and forty-one thousand three hundred and thirty-three dollars, and there are now in the Canal treasury, drawing interest, over eighty-three thousand dollars, to be expended during the winter, and after the water shall have been let off, in repairing and altering the Canal.

In the special communication which I had the honor to send to the General Assembly of 1870, I expressed the opinion, in spite of the fact that comparatively nothing had been paid in so many preceding years, that "under such a vigilant and economical administration as I have suggested, the gross revenues for 1871 would amount to.....$500,000.00
That current expenses should be about.....$150,000.00

Leaving a net balance of.....$350,000.00
to be expended in payment of first liens."

Under the present administration, the gross receipts of 1871, to Dec. 1st, have been.....$486,281.16
The current expenses.....$173,558.49

The net revenue.....$312,722.67
leaving the month of December to swell the amount.

When it is remembered that so many days were lost during the boating season of the past summer and fall, by the unusual causes of strikes among the employees, &c., and that the tonnage of the boats had to be greatly reduced, because of the low water occasioned by the unprecedented drought, it will be seen how the gross receipts and net revenues were curtailed, and the current expenses increased by extraordinary causes. As my estimate of gross receipts has been reached when December's earnings are added, so would the current expenses have been kept down nearly to my figures, and the net revenues brought up, but for these unusual and unforseen occurrences.

The first proceedings of the present Board were to pass resolutions to serve without compensation, instead of receiving three hundred dollars per annum, as each member had previously done, in addition to his travelling expenses; that the President should also act as General Superintendent and Paymaster, and be required to give bond in the sum of fifty thousand dollars for the faithful performance of the trusts confided to him; and that the earnings of the Canal should be placed at interest to the credit of the Canal. This had never been done before, and the President and Directors had used or deposited the revenues of the Canal as they pleased. The duties of the President require him to employ a Clerk, *who is paid out of his own salary.*

These reforms sum up, interest	$ 5,000
Directors' pay	$ 1,800
Paymaster's salary and expenses	$ 1,800
Clerk paid by President	$ 1,200
	$ 9,800
Pay of previous Presidents per annum	$ 2,500
	$12,300
Pay of present President	$10,000
	$ 2,300

In addition to the grand results before mentioned of nearly half a million of dollars of indebtedness having been paid in a little over a year, here are twenty-three hundred dollars per annum saved by the policy which has been so condemned. But, in addition to *these* economies and reforms, over twenty thousand dollars a year (or nearly three times the amount of the increase of the President's salary so much censured) of expenses have been reduced by the suppression of sinecures and the reduction of the number of officials—whose duties the President now discharges, in addition to what were his own previously—and of employees.

An examination of the Report of the President and Directors recently made to the Stockholders, will show that from the time this administration entered upon its duties in June, 1870, the expenses of each month were greatly reduced below the corresponding month under the previous administration; and also, that the monthly expenses of this year have been still reduced below the corresponding months of 1870 even. A glance at the last Annual Report of this Company will show these facts.

It will further be seen, that the ratio of working expenses to receipts in the last eighteen months, from 1st June, 1870, when the present President and Board were elected, to 1st December, 1871, was, ordinary and extraordinary expenses..... $43\frac{38}{100}$ per cent.
Ordinary alone..... $35\frac{47}{100}$ per cent.
For the eighteen months immediately preceding the present administration, the ratio of extraordinary and ordinary working expenses to receipts, was $81\frac{69}{100}$ per cent.
Ordinary alone..... $64\frac{57}{100}$ per cent.
For the eighteen months next preceding the middle period, the ratio of extraordinary and ordinary working expenses to receipts, was..... $68\frac{61}{100}$ per cent.
Ordinary alone..... $56\frac{4}{100}$ per cent.

As regards the *condition* of the Canal then and now, the Engineer's Report shows, that in July, 1870, it required $77,620 to put it in condition, and the report of the same Engineer shows that only $25,000 is required to place it in the same or better order now.

These figures, and the large debt paid, attest the correctness of my position.

Appealing, then, from the aspersions of the defamers, I make this true statement to you as honest Representatives, and to an honest people, and ask your and their judgment upon my policy and my act.

But another most important result is accomplished. The value of the Canal to the State has been demonstrated, and no inefficient or corrupt administrations will be tolerated in the future.

In a suit brought before the Court of Appeals to decide the priority of payments of the Canal, the Court decided that what are known as "Repair Bonds" should be first

paid. These, amounting in principal and interest to four hundred and twenty-six thousand five hundred dollars, have all been paid in two years.

The first lien now existing upon the net tolls and revenues of the Canal, under the same decree of the Court of Appeals, is the unpaid and overdue coupons of the Preferred or Construction Bonds. To the payments of these, seventy-five thousand dollars, now in the treasury of the Canal, have been appropriated, to be paid on the decision by the Court of Appeals of another question that the Board asked the Court to decide, which decision has just been rendered, and, as before said, eighty-three thousand dollars have been reserved to be expended in perfecting the Canal during the winter, when navigation is stopped and the water off.

SUSQUEHANNA AND TIDE-WATER CANAL.

The interest of the State in the Susquehanna and Tide-Water Canal, extending from Columbia, in Pennsylvania, to Havre-de-Grace, Maryland, a distance of 45 miles—which interest consists of a mortgage lien for $1,000,000, appears to be precarious, and does not seem to be accomplishing the object to secure which this loan was made by the State, and for which it has from time to time endured large pecuniary sacrifices. There are prior liens amounting to $325,000, upon which the annual interest and tax exceeds $20,000, besides other subsequent indebtedness of large amount. In order, therefore, that the State may continue to receive its annual interest of $60,000, it is evident that the Canal must earn at least $80,000 per annum in excess of its ordinary and extraordinary expenses. This, as appears by its sworn report to the Auditor General of Pennsylvania, it failed to do in 1870, and probably has not averaged since the extraordinary activity

and high tolls prevalent during the late war. Both its tonnage and revenue appear to be decreasing, and the work itself is said, by competent judges, to be in bad repair. The tonnage from the Canals above, although annually augmented, is beginning to be diverted from the Susquehanna Canal and the ports of Maryland, and to find its way, in increasing quantity, by rail from various points on the upper Canals to tide-water on the Delaware. Whether this unpromising feature be due, as is claimed by some, to a want of capacity, equipment and co-operation in the Susquehanna Canal, or not, it is obvious that it cannot continue to go on without danger, not merely of a loss of its investment by the State, but a permanent diversion from its trade-centres of a valuable commerce in the great staples of lumber, coal and iron, and the enhancement to our people of the cost of those chief elements in manufacturing prosperity and domestic comfort. Large sums of the annual interest due from this asset have heretofore been surrendered by the State, and similar sacrifices will probably be again required, for although the interest due the State has recently been paid until the last year,* the floating debt of the Canal shows a large annual increase, which must some time find its limit.

I would, therefore, with a view to the protection of the State's pecuniary interests, as well as those of its manufacturing, commercial and consuming population—recommend that if this asset of the State can be disposed of for an appropriate price, and on practical terms, to any party whose interest and necessities furnish a reasonably fair guarantee that such sale will tend to the improvement of the Canal and its honest devotion to the original design

* When this communication was given to the printer late in December, none of the interest for 1871 had been paid. If paid after, the Comptroller will inform you.

of attracting, by cheap transportation, the commerce of the Susquehanna Valley to the waters of the Chesapeake Bay, and the towns and cities thereon—that such sale be authorized by law. I would suggest the Board of Public Works as the most appropriate representatives of the State in such transaction, and that no considerations, merely pecuniary, should be permitted to influence the sale to any parties, corporate or otherwise, whose interests are not visibly and exclusively involved in improving and maintaining forever this important channel of our commerce, and in keeping it a branch of a continuous line of navigation.

MARYLAND NATIONAL GUARD.

The effect of the Military Act of the last General Assembly was greatly to diminish and nearly to destroy the military organization of the State. All the regiments in Baltimore were disbanded, except the Fifth, and it was mainly preserved by its great *esprit de corps*. Whilst it is proper to avoid extravagance in all State expenditures, a certain military organization is absolutely necessary in the State, and particularly in as large a city as Baltimore; and as the different regiments are mainly composed of young men of small means, their time is all that the State ought to ask them to give gratuitously. Time, to most of them, is money. Their ordinary proper expenses, when on duty, should be paid, armories provided, and arms and uniforms furnished. I do not mean to intimate that the appropriation made by the last Legislature will not in future be sufficiently large. But the reduction then was so sudden and great, and such obligations had been incurred that had to be provided for out of it, that the then existing regiments saw the impossibility of their maintenance, and all but the Fifth disbanded. I have felt it a duty, and it has been a great pleasure, to aid this gallant regiment

in every way that I could. Yet they and I have, alike, felt that more should have been done for them than under the law I could.

There should be at least two effective regiments of infantry, a company or two of artillery, and a squadron or more of cavalry in Baltimore, for use in times of tumult or resistance to law. An effort is being made by the Adjutant General, supported by efficient military gentlemen, to raise a second regiment there, and I hope with good prospects of success. Then, if the appropriation shall be found sufficient for the artillery and cavalry, I doubt not they will be raised.

Upon the disbandment of the regiments, I gave directions that proper efforts should be made by the Adjutant General's Department for the collection and return of the State's property in uniforms, arms, &c. And here I greatly regret to have to report an unauthorized sale or exchange, by the late Adjutant General, entirely without my knowledge or consent, of a large number of the State's arms, a large sale of clothing which has not been accounted for, and also a shipment of eight hundred guns to New York, not accounted for in the professed exchange of arms, and reported recently by a then employee in the office.

Immediately upon hearing a report of the shipment of any of the arms, I proceeded to Baltimore, hoping to stop them in transit through. It was too late, and I called upon the Adjutant General for an explanation of this secret and improper transaction of a disposal of the State's property without condemnation by a Board of Survey, and public notice duly given.

As such an explanation was not and could not be satisfactory, I required his resignation, which was promptly given, but was afterwards sought to be revoked. This I would not consent to; and General McBlair having been

appointed, the late Adjutant General refused to transfer the books and papers of the office, and claimed to be still the Adjutant General of the State. I immediately caused legal proceedings to be instituted in the Superior Court of Baltimore city, by Attorney General Jones, who promptly and efficiently responded, and the Court deciding all the questions involved in favor of the State, the books and papers were removed to Annapolis by General McBlair, whose right to the office was also decided.

I did not feel that I had properly discharged my duty to the State by simply requiring a vacation of the office by the late incumbent, and would have proceeded to a criminal prosecution, but that I was advised by the Attorney General that, legally, the transaction was only a breach of trust.

I therefore advise the passage of a law making it a criminal offence, punishable by imprisonment, for improperly disposing of State property; and in the light of recent experience, I cannot too strongly urge that the Adjutant General shall be required to give a bond commensurate with the amount of State's property entrusted to him. He is the only officer not so required to bond, and this omission must have been in the past purely an oversight.

STATE LIVE STOCK SCALES.

Properly appreciating the great importance of its cattle trade to the city of Baltimore, I asked the attention of the last General Assembly to certain suggestions which I made, and upon which it passed favorably. These have resulted in great good, and the weigher of live stock has, with the approval of the Comptroller and myself, been allowed to expend a large proportion of the receipts from the scales in making proper and necessary repairs. The fencing around the many lots was much dilapidated, and

very few of the lots and alleys were paved, causing, in bad weather, much discomfort to the beasts and their owners, or consignees. All this has been remedied. Strong and substantial fencing has been erected, the grounds well paved, the old scales repaired and new ones erected.

It should be borne in mind how this trade has increased. When these scales were erected a few years ago, eight hundred cattle was a large weekly receipt, and the demand was confined exclusively to home consumption. Now we have frequently four or five thousand a week; and coming from the Middle and Western States, there is a very large demand for them from the North and East.

Baltimore has thus become one of the largest *distributing* markets in the United States. When you calculate the immense amount of money changing hands weekly in this trade, you will at once realize how important it is to a city which can command it, and to the carrying interests which transport it. The improvements made in the last eighteen months at the scales, have not failed to attract the attention of graziers and dealers, and the Maryland scales, and their management, are now pronounced by persons dealing in all the large eastern and western cattle markets, as equal, if not superior, to those of any of the large cities, while the receipts at the scales for weighing were increased in the same period nearly five thousand dollars over the preceding eighteen months. What is now required, is more room for the largely increasing trade which these improvements are drawing.

Although by the Act of 1864, ch. 328, the Weigher is authorized to enlarge the grounds by purchase, upon the approval of the Governor and Comptroller, yet, we were not disposed to exercise the power without the sanction of the Legislature, because of the high rates asked for the adjacent property. The property desirable to have, lies

west of that owned by the State, and occupied by the scales. On the east of the enclosed pens, and running down to Gwynn's Run, the State owns ground enough for its present wants. But it is so broken, and its descent so precipitous, as to make it unavailable for use as pens or scales, and its filling up would cost more than the difference between what it would bring if sold, and the cost of purchasing the land on the west.

Whilst this ground on Gwynn's Run is unavailable for pens and scales, however, it is peculiarly suited to, and might be made very useful for, an *abattoir*, where wild and disabled cattle, of which there are numbers every week, and any others, might be slaughtered. I would not recommend the erection of this by the State, but I doubt not that the lot could be sold for this purpose to some of those large capitalists so extensively engaged in the trade; and I therefore would recommend, from a careful and personal inspection of the grounds, and a knowledge of the wants of this immensely important trade, that the *next* Board of Public Works be authorized to sell the ground on Gwynn's Run, and buy that on the west of the scales.

STATE LIBRARY.

The last Legislature having acted upon the suggestion I made concerning the State Library, its present is in marked contrast to its then condition. It is now creditable to the State, but may be still more improved; and I think an annual appropriation should be made, to be expended, as the last was, under the direction of the Committee then appointed, and the Librarian. Both the Committee and the Librarian have faithfully discharged the duties intrusted to them, and the purchases have been made at wholesale trade prices.

In this connection I submit to you an appeal made to

me by the Chicago Law Institute, for a contribution to its Library—destroyed by the late distressing conflagration—of our State Laws, Digests and Reports. Having no authority myself to respond favorably to their request, I recommend the passage of a joint resolution, directing the Librarian to transmit to the Institute copies of such volumes as are in sufficient number to be spared.

THE OYSTER, FISH AND WILD FOWL LAWS.

The Commander of the State Oyster Police Force has recently made to the Commissioners a very interesting and elaborate report upon the different water-food producing interests of the State, in connection with the laws upon the various matters of fish, oysters and wild fowl; accompanied with numerous suggestions for amending and enforcing these laws. But it is far too lengthy to be even epitomized in the limits herein allowed, and can, if deemed advisable, be printed for the consideration of the Legislature.

I would recommend an alteration in the Oyster Law, which experience satisfies me will tend greatly to prevent its frequent violation. In all cases where application has been made to me for remissions of fine for dredging, it has been accompanied with the statement that the Captain had violated the owner's orders. The penalty now falls alone on the owners of the vessels, who are in most cases absent. If, in addition to the fine being imposed upon the vessel or owner, the captain, or person in command of the vessel at the time of the violation of the law, were made punishable by imprisonment, a stop would be put to the frequent and wilful violations which now occur.

The Act of 1870, ch. 296, for the better preservation of wild fowl, has met with much opposition from, and

seems to have worked peculiar hardship to, a class of citizens residing along the Susquehanna Flats, who largely depend for their living upon the killing of water-fowl. It may well be doubted also, whether one of the objects of the advocates of the law has not been disappointed; as the greater security, afforded the ducks upon their favorite feeding grounds, has kept them out of other waters.

It will be a matter for your consideration, whether the law shall be continued or amended; but with me there has been no option but to execute it equally with all other laws. I have accordingly done so through the agency of the Oyster Police Force.

Although more than ever impressed with the feasibility and importance of fish culture, and the large and delicious increase which it would add to the food supply of the State, throughout its many fluvial streams, I have not appointed the Commissioners authorized by Act of 1870, ch. 297, in accordance with my suggestion to the last Legislature.

The qualifications required were such that it was difficult to find gentlemen willing to accept; and one whom I had selected as most suitable, from his having made the subject a study in this and other countries, and from his extended acquaintance among the Fish Commissioners and Pisciculturists of other States, left for Europe shortly after the passage of the Act. His return having been delayed until too late for him to comply with the provision of the law requiring the Commission to make the examination of the Rivers of the State, and report at this session, I thought it best to leave the matter over, and suggest to you the continuance in force of the Act another term.

The Commander of the Oyster Police Force, having,

at my request, spent much time among the Potomac River Fisheries, during the last fishing season, reports the results of his observations. There is a general concurrence in the opinion expressed by him, that if the decrease in the "run" of shad and herring is to be arrested, the fish must be allowed a certain time, during their annual migrations, in which they can pass, unmolested and unharmed, to their spawning grounds.

If it may not be deemed expedient, because of the too great expense entailed upon the fishermen to keep their "outfit" idle so long, to adopt Captain Davidson's suggestion, that for two or three days in each week no fishing should be allowed, I would advise that fishing by seines and gill-nets be absolutely prohibited on the Sabbath. Thus would the fish be measurably protected, and God's Holy Day not be profaned by hard labor.

INSURANCE.

This subject, from the vast amount of money annually invested by the people of the State in life, fire, marine and other insurances, demands the attention of the Legislature.

It is a fact beyond dispute, that the people of the State pay annually nearly five times as much for insurance as the entire State taxation. Yet they have no protection from fraud, as the law now only requires a company incorporated by the laws of another State, or a foreign country, to pay a simple license fee or tax. Thus any foreign company paying license can transact business in Maryland, without its financial condition being established, and without the slightest ability to meet the liabilities it may incur in this State. A few scheming men can also obtain, through the Courts, a charter for a company, intending, from its inception, nothing but fraud.

There are but few States that have not established a separate department for the control of this important branch of business, and among them is our own. I would not advise a separate and distinct department, but would recommend the establishment of one as a branch of the Comptroller's Office—the Comptroller being authorized to assign a head—and the adoption of the fees of the National Insurance Convention as the proper charge upon the companies for its support.

Such a law would give protection from fraudulent concerns, and be no expense to the State; as Insurance Companies, established upon sound bases, would prefer to pay these fees to competing with companies that never expect to pay their losses, and can therefore write policies at such ruinous rates as no sound company would consider. I would protect such companies as protect the people from losses, and rid the State of such as receive the people's money without intending them protection.

VACCINATION.

In view of the epidemic of small-pox which at present prevails in the neighboring States, and is always liable to break out in any locality, the subject of vaccination is one that should claim the attention of the Legislature. It is the generally accepted opinion of scientific men, that vaccination with pure and healthy virus is a sure means of arresting the spread of this loathsome disease. The system of compulsory vaccination, after the manner of the States of Europe, would not be wholly in accordance with the spirit of our institutions, however necessary it may appear in the judgment of a great majority of the people. The supply of pure virus, sufficient to protect the whole community, can be secured at all times by proper management, and it is the duty of the State to devise means to

this end. All plans heretofore tried have failed to accomplish the purpose, owing to their inadequacy and want of completeness. The State Agricultural College might be well utilized for this purpose, and it be made a special and serviceable feature of the Institution, by the appointment of one of the scientific gentlemen connected with it, as a State Vaccine Superintendent, and a small appropriation might be made for the purchase and keeping of the animals necessary to furnish the requisite supply of vaccine matter.

CASE OF DANIEL NYE, OF MARYLAND, SURRENDERED ON REQUISITION OF GOVERNOR OF PENNSYLVANIA, AND RETURNED AT MY REQUEST.

As a case which may make an important precedent, and as illustrative of the comity which should be extended between sister, and especially neighboring, States, and which, I am happy to say, has prevailed throughout my administration with the Executives of all the States, I think it proper to submit the papers in the case of Daniel Nye:

Nye, a citizen of Washington county, Maryland, was demanded, upon a requisition from the Governor of Pennsylvania, upon an indictment found by the Grand Jury of Adams county, in that State, for an offence set forth in the indictment as having been committed in that county.

The Governor's requisition being in proper form, and the indictment accompanying it, I had no doubt of the truth of the allegations contained as to the offence, if any, having been committed in Pennsylvania, and accordingly immediately surrendered the party.

I was surprised to be informed, shortly after, by Major Douglass, of Hagerstown, counsel for Nye, that the indictment did not truly set forth the facts, and that the offence, if committed at all, had been committed in Maryland, and not in Pennsylvania. In addition, while the

laws of Pennsylvania made the Act a crime, it was only a misdemeanor by the laws of Maryland.

Submitting the facts to the Governor of Pennsylvania, I asked the immediate release and return of Nye to Maryland. It affords me the greater pleasure, because of the differing political sentiments entertained by us, to report that Governor Geary at once ordered a *nol. pros.* and the return of Nye to Maryland; since which he has been unmolested.

APPORTIONMENT OF DELEGATES TO THE GENERAL ASSEMBLY

The Constitution, by Article 3, Sections 4 and 5, made it my duty as Governor, to rearrange the apportionment of Delegates to the General Assembly among the several counties, on the basis fixed by Section 4 of that Article.

In compliance with this Constitutional provision, on the receipt of the published census of 1870, taken under the authority of the Federal Government, I made the apportionment of Delegates to the General Assembly among the several counties of the State, and issued my official proclamation making known that apportionment, as required by the Constitution.

A copy of this proclamation is herewith transmitted.

WAR CLAIM OF THE STATE AGAINST THE UNITED STATES.

The attention of the last General Assembly was called, in my message to that body, to a claim for reimbursement which the State had against the Federal Government, under the Act of Congress of July 27, 1861, but which had never been advanced.

No action, however, having been taken, by that Legislature in the premises, and the Act of Congress expiring by limitation on the 30th of June 1871, I proceeded to Washington, accompanied by the Secretary of State, in the early

Spring, to investigate, as far as I could, with the time at my command, the chances of the State to receive her dues.

I found, as might have been expected, and as I suggested to the Legislature of 1870, that the services of an attorney to properly prepare and set forth the claim, were necessary to its successful prosecution.

If action had been delayed until the convening of this Legislature to authorise the appointment of such a Commission, the State would have been debarred from ever filing her claim. I therefore assumed the responsibility of employing counsel for the State, and selected Hon. Daniel Clarke, who was practising in the Courts of Washington, and Mr. S. J. Wailes, another citizen of Maryland, prosecuting claims in the Departments there, to represent the State; conditioning with them that their compensation should be a per centage upon the amount recovered, and to be fixed by this Legislature.

They will report to you; and although, because of the short time they had to act, we cannot hope to receive as large a sum as if the last Legislature had acted upon my suggestion, yet, I doubt not their efforts will ultimately result in profit to the State, and my action receive your approval.

FEDERAL REVENUE TAX UPON "DISTRIBUTIONS" AND "SUCCESSIONS."

By the Act of Congrsss of 1864, ch. 173, all property, real or personal, inherited by will, or by intestate laws of any State, is required to pay a Federal Revenue Tax, ranging from one to as high as six per cent.; and the neglect of a successor to make proper return, subjects the property to an increased assessment, and himself to a fine.

With the loss of so much personal property, and the greatly diminished value of real estate in Maryland, caused

by the war, I have frequently seen the great hardship of this law. In many cases it is nothing but a simple robbery of poor orphans; and as there can be no necessity for its retention, I hope the Legislature will request our Senators and Representatives to move for its repeal. With the press and the wealth of the country daily agitating the repeal of the income tax, which falls upon comparatively so few, no voice has been raised in defence of the widows and orphans.

FEDERAL AFFAIRS—THE "KU-KLUX" ACT OF CONGRESS.

Passing from a review of the prosperity, political and material, with which, under a benign Providence, the people of our own beloved State have been so signally blessed, the minds of thoughtful and patriotic men, everywhere, have been insensibly attracted to the contemplation of a condition of affairs in other and less favored portions of our widely extended territory, well calculated to awaken the most serious apprehensions of danger to the permanence of those systems of Government, State and Federal which, descending from the hands of our ancestors, have, until recently, been considered equal to all the ends for which they were instituted.

Whatever differences of opinion may, at any time, have existed among leading statesmen of the country, as to the true interpretation and meaning of many of the provisions of the Federal Constitution, until within a comparatively short period of time, few, if any, have been found rash enough to deny that the Government of the United States is one of limited authority, derived from grants of power contained in a written compact to which the States, as such, are parties—that the powers not delegated by that instrument to the United States, nor prohibited by it to the States, are reserved to the States respectively, or to

the people, and that to the extent of the powers thus delegated to the one, and not prohibited to the others, each, within its own territorial limits, is absolutely sovereign and independent.

Nor, in the practical administration of the Government for nearly three-quarters of a century, was this view of the sovereignty of the United States, and of the States, ever questioned or denied. On the contrary, during all that time, with rare exceptions, the Federal Government, recognizing the sovereignty of the States and its own limited authority, confined its action within the sphere of its delegated powers, cautiously abstained, upon any pretence, from all interference in the local affairs of the States, and studiously forbore, of its own motion, to invade the territory of any one of them under pretext of suppressing domestic insurrection, of aiding in the enforcement of its laws, of affording protection to its citizens against lawless violence, or of securing to them the possession and enjoyment of constitutional rights.

Such, undoubtedly, had been the admitted theory of the Federal and State Governments, and such the practice of the General Government in regard to them, down to and for a considerable time after the occurrence of the late unhappy civil war; and so firmly rooted in the minds and hearts of the people was this estimate of the nature and character of these several Governments and of the sovereignty of each, that it was deemed prudent by Congress, in order to allay popular apprehensions of danger to both, as a consequence of the war then flagrant, as early as the twenty-third day of July, eighteen hundred and sixty-one, to make the solemn declaration that the war was waged to defend and maintain the supremacy of the Constitution, and to preserve the Union, with all the dignity, equality and rights of the several States unimpaired.

And if in the progress of that bloody struggle, the limited powers conferred by the Constitution were found inadequate to the exigencies of the war, and an undefined and illimitable "war power," as the criterion of Federal authority, was substituted in their stead, simultaneously with its assertion, the faith of the Government was pledged to the unconditional restoration of the supremacy of the Constitution upon the return of peace. In the month of April, eighteen hundred and sixty-five, peace came, and with it the triumph of the arms of the United States over the rebellious States. From that time forth the Government of the Confederate States ceased to exist—its armies were disbanded, its soldiers laid down their arms, returned to their homes and resumed their former peaceful avocations.

With equal alacrity the States themselves, then lately in rebellion, accepted the stern arbitrament of the sword, and submitted, in good faith, to the authority of the Government.

At the instance of the President of the United States, and as conditions precedent to an early resumption of their former relations to the Union, the respective States of the late Confederacy assembled Conventions, remodeled their Constitutions, established, by competent authority, governments Republican in form, abolished slavery, repudiated the Confederate debt, declared the ordinances of secession null and void, elected Senators and Representatives to Congress, qualified and ready to take the test oath prescribed by law, and before the close of the first year of peace everything on their part, deemed necessary by the Executive Department of the Government to entitle them to complete rehabilitation, was done and accomplished.

And yet, upon the appearance at the seat of the Gov-

ernment of the Senators and Representatives thus elected and qualified, Congress, taking issue with the President upon his policy, and that of his immediate predecessor, in relation to an early restoration of the Union, and unmindful of its solemn assurance as to the objects and purposes of the war, denied them admission to their seats, and refused to recognize the reorganized governments from which they were accredited. After a lapse of more than twelve months, during which Congress engaged itself in the preparation of measures looking to a vast enlargement of the powers of the Government, and to the most effectual means of securing their adoption, culminating in the adoption of the Fourteenth Amendment of the Constitution, on the second of March, eighteen hundred and sixty-seven, a law was passed, entitled "An Act to provide for the more effectual government of the Rebel States."

By this Act and several supplements thereto, the Governments then lately established in ten Southern States were declared to be provisional only, their territorial possessions were divided into military districts, made subject to military law, placed under the command of military officers, with authority to organize military commissions for the trial and punishment of all offences, including even such as involved the life and liberty of the citizen.

Nor was a ray of hope left to the unfortunate inhabitants of this proscribed section of our common country, of escape from the galling despotism to which they were thus arbitrarily subjected, but in the acceptance of conditions degrading to themselves, destructive alike of the rights of the States of which they were citizens, *and of all other States of the Union*, and designed to effect a radical change in the character, if not in the form of the Federal Government.

An inexorable rule of reconstruction and readmission to the Union of the excluded States, required that control of the elective franchise in each should be virtually surrendered to the will of Congress; large classes of persons, not before included, were to be invested with the right of suffrage, while others, composing the mass of the most intelligent, educated and refined citizens, were to be excluded from its exercise and from all participation in public affairs; and finally, as the crowning act in this drama of force and fraud, the Fourteenth Amendment, with all of its disfranchising provisions, was to be accepted and ratified In process of time, each and all of these humiliating requirements were, almost without a murmur, submitted to, and complied with, by a helpless and subjugated people. And now, once more, the march of reconstruction was resumed, though not at any greatly accelerated pace—State Governments were reconstructed, and reconstructed States admitted to the Union, again remitted to colonial bondage and military domination, and once again, at the caprice of Congress, reconstructed, until the close of the year eighteen hundred and sixty-eight found all of the States lately in rebellion, except Virginia, Mississippi and Texas, recognized as finally reconstructed and relieved of military government.

On the thirtieth of March, eighteen hundred and seventy, Texas, the last of the three outlying Rebel States, was admitted, and thus was the supremacy of the Constitution maintained and the Union preserved, not in its original integrity, nor "with all the dignity, equality and rights of the several States unimpaired," but with a central government, invested with extraordinary powers not before possessed by it, wrested from the mass of rights originally reserved to the States, by means of amendments engrafted

by force and fraud upon the fundamental law, essential to the independence of the States, destructive of their sovereignty, and dangerous to the liberties of the people.

Had the Federal Government paused at this period in its career of centralization, had its movements towards consolidation been arrested at the point of reconstruction and reunion, and had it confined its subsequent action within the legitimate limits, even of its newly acquired powers, the people of the country, wearied with war, and oppressed with the weight of debt and taxation which have followed in its train, though far from approving, might, and doubtless would, have quietly accepted the situation, and submitted to the arbitrament of time, the wisdom and policy of the measures which have grown out of its prosecution.

Unhappily for the best interests of the country and of its people, the restoration of the Union, and the universal prevalence of peace within its borders, have failed to admonish the Government of the United States that, notwithstanding the large accumulation of its powers by constitutional amendments, there is yet to be found in the compact from which its existence is derived, the clearest limitations of its authority, and the fullest recognition of all the rights, however diminished, which are still reserved to the States or to the people. From the period of the restoration of peace down to the present moment, no hostile arm has been raised against the authority of the United States, or of any one of them. In each and all of them civil governments are in full and uninterrupted operation, and the judicial tribunals of the United States, and of every State, have been, and now are, engaged without opposition from any quarter, in the vigorous execution of all of their constitutional and legal functions; nor is it pretended that in any single instance they have

been obstructed by lawless combinations, or otherwise, in the administration of justice and punishment of crime within their respective jurisdictions. And yet, in the presence of these well-known facts, the Congress of the United States, unmindful of the limitations upon its powers contained in the Federal Constitution, is still progressing in its career of unbridled usurpation, by the consolidation of absolute power in the hands of the Government.

By the passage of the Act approved April 20th, 1871, commonly known as the "Ku-Klux Law," entitled "An Act to enforce the provisions of the Fourteenth Amendment to the Constitution of the United States, and for other purposes," under an assumed denial by any State of the equal protection of its laws to all of its citizens, the President is invested with authority arbitrarily to invade the whole or any part of such State with the entire military power of the Government, to suspend the privileges of the writ of *habeas corpus* within certain prescribed limits, when in his judgment the public safety may require it, and to cause its citizens to be arrested and imprisoned, without bail, at his own will and pleasure.

Under the extraordinary provisions of this unprecedented Act, by proclamation of the President martial law has been inaugurated in nine counties of the State of South Carolina, and within the whole extent of their territorial limits the functions of the civil government of that State have been superseded by the presence of an armed, mercenary soldiery, by whom hundreds of peaceful citizens nave been arrested without warrant, dragged from their homes, and incarcerated in loathsome prisons, while thousands of others have sought refuge in flight from similar oppressions. That such a law is repugnant to the spirit of the Constitution, that it is in flagrant violation of several

of its express provisions, and that it is subversive of all free government, needs no argument to demonstrate.

The Act rests for its constitutionality, professedly and alone, upon the power vested in Congress by Article 14 of the Constitution, commonly called the "Fourteenth Amendment." By the first Section of that Article it is provided, that "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws." By its fifth Section it is declared, that "Congress shall have power to enforce, by appropriate legislation, the provisions of this Article." The third Section of the Act provides, "That in all cases where insurrection, domestic violence, unlawful combinations or conspiracies in any State shall so obstruct or hinder the execution of the laws thereof, and of the United States, as to deprive any portion or class of the people of such State of any of the rights, privileges or immunities, or protection named in the Constitution, and secured by this Act, and the constituted authorities of such State shall either be unable to protect, or shall, from any cause, fail or refuse protection of the people in such rights, such facts shall be deemed a denial by such State of equal protection of the laws to which they are entitled under the Constitution of the United States; and in all such cases * * * * * * * * * it shall be lawful for the President, and it shall be his duty to take such measures, by the employment of the militia, of the land and naval forces of the United States, or of either, or by other means, as he may deem necessary, for the suppression of such insurrection, domestic violence, or combinations."

It will thus be seen that it is the last clause of the prohibition, contained in Section 1, of Article 14, of the Constitution, which the third Section of the Act proposes to enforce, nan.ely, that no State shall "deny to any person within its jurisdiction the equal protection of the laws; and it is only in the event of such denial by the State that Congress is empowered to enforce, by appropriate legislation, that provision of the Article." The intention of the makers of a law is held to be the safest guide to its interpretation, and by the universal consent of all judicial tribunals, that intention is ascertained by ascribing to the *language* employed in its enactment *its ordinary and usual acceptation*. A sovereign State can only speak and act through the medium of laws enacted by the legislative department of its government. When, therefore, in the Fourteenth Amendment, the term "deny" is employed, it was intended to bear the known signification which belonged to it when used in such relation, and that is, "to refuse to grant," "to withhold," and when coupled, in the prohibition in question, with the word "State"—"No State shall deny"—it was clearly designed to restrain the State from the enactment, by its Legislature, of laws discriminating between classes of citizens in the equal protection of the laws to which all were alike entitled.

"*So long, then, as the Legislature of a State refrained from the passage of laws denying to citizens equal protection, or discriminating between classes of citizens in this respect, just so long was Congress powerless*, under the fifth Section, to enforce that provision of the Fourteenth Article which was intended to secure such protection. In this view the third Section of the Act is plainly unconstitutional, for it refers throughout to the acts of individuals, by which a State may be prevented from affording

the required protection, *and not to the act of the State itself*, through its Legislature, denying to the citizen the equal protection of the laws.

But it is by reference to the provisions of the fifth Section of the Amendment, that the constitutionality of the third Section of the law will be most effectually tested—"Congress shall have power to enforce, by appropriate legislation, the provisions of this Article." What was meant by the language, "enforce by appropriate legislation," as used in this Section of the Constitution? Did it mean any and all means which Congress might *arbitrarily* adopt, even though expressly *prohibited* by other provisions of the Constitution? If such is the meaning to be ascribed to the peculiar phraseology of the fifth Section of the Amendment, then it will follow that Congress may, by indirection, *abrogate* any existing provision of the Constitution which may be supposed to interfere with such mode of enforcement as it might prefer to adopt. Surely no one will contend that Congress is invested with any such extraordinary and dangerous power.

The only rational meaning that can be ascribed to the language of the fifth Section is, that Congress shall enforce the Fourteenth Article of the Constitution by such means as are apt to the end to be attained, and consistent with all other provisions of that instrument.

The third Section of the Act requires the President, *of his own motion*, "in all cases where insurrection, domestic violence, unlawful combinations or conspiracies in any State shall obstruct or hinder the execution of the laws thereof, to take such measures, by the employment of the militia, or the land and naval forces of the United States, or either of them, as he may deem necessary, for the suppression of such insurrection, domestic violence or combinations."

The fourth Section of the fourth Article of the Constitution provides, that "the United States shall guarantee to every State in the Union a Republican form of government, and shall protect each of them against invasion; *and on the application of the Legislature, or of the Executive, when the Legislature cannot be convened,* against domestic violence."

Justice Story, in his commentaries on the Constitution, in reference to this Article and Section, remarks, that "It may not be amiss further to observe, (in the language of another commentator,) that every pretext for intermeddling with the domestic concerns of any State, under color of protecting it against domestic violence, is taken away by that part of the provision which renders an application from the Legislative, or Executive authority of the State endangered, necessary to be made to the General Government, before its interference can be at all proper."

It thus becomes clear, beyond all question, that the third Section of the Act, authorizing and requiring the President, *at his own discretion, and without the application of the Legislature or the Executive of a State,* to employ the military power of the Government in the suppression of insurrection, domestic violence or combinations within its territory, and against its authority, is palpably in conflict with the last clause of the fourth Section of the fourth Article of the Constitution, and that it is therefore utterly unconstitutional and void.

Unconstitutional and alarming as are the provisions of the third Section just reviewed, it is in the fourth Section of the Act, which authorizes the President not only to suspend the privileges of the writ of *habeas corpus,* but to judge of the existence of the exigency which justifies

suspension, that the most dangerous assumption of power ever attempted in the past history of the Federal Government is to be found.

That Section provides, "That whenever in any State, or part of a State, the unlawful combinations named in the preceding Section of this Act shall be organized and armed, and so numerous and powerful as to be able, by violence, to either overthrow or set at defiance the constituted authorities of such State, and of the United States, within such State, or when the constituted authorities are in complicity with, or shall connive at, the unlawful purposes of such powerful and armed combination; and whenever, by reason of either or all of the causes aforesaid, the conviction of such offenders and the preservation of the public safety shall become in such district impracticable, in every such case such combination shall be deemed a rebellion against the Government of the United States, and during the continuance of such rebellion, and within the limits of the district which shall be so under the sway thereof, (such limits to be prescribed by proclamation,) it shall be lawful for the President of the United States, when in his judgment the public safety shall require it, to suspend the privileges of the writ of *habeas corpus*, to the end that such rebellion may be overthrown."

The writ of *habeas corpus* is the appropriate remedy to ascertain whether any person is rightfully in confinement, and the cause of such confinement; and if no sufficient ground of detention appears, to secure his discharge. It has, therefore, for ages, been justly esteemed by our English ancestors as the great bulwark of personal liberty, and by their American descendants as the *birth-right* of the citizen. The framers of the Constitution, in securing

to the citizen the inestimable privileges of this great remedial process, were cautious in prescribing, by the use of the most unmistakable and appropriate language, the sole conditions of its suspension, as well as in indicating the power by which alone its suspension could be declared.

Hence, it was provided by Sub-Section 2, of Section 9, of the first Article of the Constitution, that "The privilege of the writ of *habeas corpus* shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require it."

This provision is found in the Constitution, arranged among the powers which are conferred upon or denied to Congress, and for that and other sufficient reasons, it has always been held that both the power to suspend and the right to judge of the existence of the exigency, reside in Congress alone, and that neither can be delegated to any other department of the Government. And Justice Story, in his commentaries, justly observes, "That it would seem, as the power is given to Congress to suspend the writ of *habeas corpus* in cases of rebellion or insurrection, that the right to judge whether the exigency had arisen, must exclusively belong to that body." But the Act does not stop with the unconstitutional delegation to the President of the power to suspend the privilege of the writ of *habeas corpus*—it proceeds to define the exigency itself—upon the occurrence of which, the authority delegated to the President to suspend may be exerted, and in doing so it affixes to the term "rebellion" a meaning which has never before been applied to it.

Rebellion, when the Constitution was framed and adopted, according to its received acceptation, meant "An open and avowed renunciation of the authority of the Government to which one owes allegiance, or the taking of arms

traitorously to resist the authority of lawful government." On the other hand, "Rebellion differs from insurrection. Insurrection may be a rising in opposition to a particular act or law, without design to renounce wholly all subjection to government." Notwithstanding this clear distinction in the meaning of the terms "rebellion" and "insurrection," Congress has thought proper to declare that *insurrection* shall be taken to mean rebellion, and that when insurrection exists in any State against its authority, the President, treating it as rebellion, when in his judgment the public safety shall require it, is authorized to suspend the privilege of the writ of *habeas corpus*. If Congress has authority in this case to change the received meaning of language used in the Constitution to impose restraints upon its powers, then, with equal facility, by like means, it may evade and annul any other constitutional restriction which may have been imposed upon it. It possesses no such power, and neither Congress nor the President can, under any circumstances, constitutionally suspend the privilege of the writ of *habeas corpus* but in cases of rebellion and invasion, as those terms were understood by the framers of the Constitution. To push argument further, for the purpose of demonstrating the flagrant unconstitutionality of the two Sections of the law now under consideration, might, indeed, well be regarded as a work of supererogation, for it is impossible to conceive that any intelligent mind, with the lights which have been thrown upon the question, can for a moment hesitate or doubt upon the subject.

Assuming, however, that these provisions of the Act are not repugnant to the Constitution, and that the President is constitutionally and rightfully possessed of all the powers which they assume to confer upon him, both the fact and

the manner of the execution of the law in the proscribed district of the State of South Carolina, may well serve to warn the country of the danger to free government and to liberty, of confiding to the hands of any one man the exercise of such vast and unlimited powers; for it may be safely affirmed, from facts already hereinbefore stated, that at the time of the proclamation of martial law in nine counties of that State, not one of the exigencies named in the Act had arisen to justify the suspension of the writ of *habeas corpus*, or the invasion of the territory of the State by the armed power of the Government, and the arrest and imprisonment of its citizens; and, with equal safety, may it be suggested, that if, until within the past ten years, any President, under like circumstances, had presumed to have exercised similar powers, it would have been done at the hazard of impeachment, and of certain removal from office.

If such usurpations of power by the Legislative and Executive Departments of the Government of the United States are much longer acquiesced in by the people, it requires but little prescience to foresee that sooner or later it must end in the absorption of all power by the General Government, the utter annihilation of the States, and the erection upon their ruins of a consolidated and centralized despotism, fatal alike to constitutional freedom and to public and private liberty.

I must crave your indulgence for this very lengthy review of an unconstitutional Act, and its tyrannic and cruel enforcement. Not sympathy alone for the suffering South Carolinians, but a sense of duty to our own people, in order to show the progress towards consolidation of those entrusted with the control of the Federal Government, seemed to make it imperative.

I would recommend the passage of joint resolutions, embodying the opinion of the General Assembly of this Act of Congress, and its enforcement by the President, to be sent to every State, requesting co-operation, by all constitutional and legal means, to accomplish an immediate repeal of the law, and to prevent in the future a recurrence of like usurpation.

FEDERAL INTERFERENCE AT STATE ELECTIONS.

The length of time which has elapsed since the Congressional Election of 1870, would be no excuse for my not calling the attention of the Legislature, which has not since convened, to the outrage committed upon the citizen and the franchise, by the interference at that election of United States Marshals, and the threatened employment of Federal Soldiers.

The dearest right of the American citizen is an untrammelled elective franchise.

It is the great bulwark of our liberties.

No party has heretofore dared prevent its free exercise.

No Federal or State administration has ever dared assail it before.

In 1870 was made the unhallowed beginning of a Federal usurpation, which, if not timely checked by the American people, must lead to the disastrous end of a Free Republic. What was claimed during the recent war as a "military necessity," to crush a great "Rebellion," we have seen, five years after the close of the war, the entire restoration of the Federal authority over the seceded States, their confessed "reconstruction," and a perfect supremacy of peace, law and order, from the Arostook to the Rio Grande, repeated in a hundred-fold worse form over States ever loyal and true to the Constitution of the Fathers and the Union of the States.

We have seen, to our shame and the terror of all lovers of constitutional government, the power claimed and exercised by a military Federal administration, to place its Marshals and its Censors of Election at any voting precincts it chose to select, in even the powerful States of New York and Pennsylvania.

We have submitted in the smaller States, as they have done in the greater, to prevent riot and bloodshed, and perversion of local government.

We have had not only white and black overseers of the election imposed upon us, but those of the most degraded character of men—some of them felons and ruffians.

We have had small and unprincipled men, in the garb and authority of United States officers, effrontingly and audaciously proclaim, through the public press, to the free voters of the United States, what *they* would and would not "permit" and "allow," and "consent" to at the election.

Shall these audacious acts and usurpations be submitted to and go unrebuked by a free people, to be repeated and intensified at any National, and particularly Presidential election? Will they, by silence and acquiescence, or submission, strengthen the hands of those who would usurp their liberties, and have thus commenced?

Wisely and well, perhaps, did the people and their constituted authorities submit for the time, rather than inaugurate civil war again. But such acts must not be repeated. Peaceably they *may* be stopped by the uprising protest of the people. Peaceably or forcibly they *must* be stopped, or our liberties submerged, and a Republic lost in a military despotism.

Maryland, one of the old thirteen States, whose "Line" in the Revolution was equally gallant and conspicuous at

Saratoga, in the North, and at Camden and Cowpens, in the South; ever true to the Constitution, and without one taint upon her fair escutcheon, was forced, with her more powerful sister States, in a time of profound peace, to submit to this degradation and aggression.

Maryland occupies a position between the North and the South. Her territory nearly surrounds the Capital of the United States, (in whose permanence she is particularly interested,) named after the Father of his Country, whose testimony of our State's Revolutionary sufferings and services to the whole country now occupies a prominent place in our Executive Chamber. It was in the Senate Hall of Maryland that George Washington surrendered his commission. Where so fitting a place to recall to the American people his warnings and injunctions? Where other than in Washington, the Capital of the Nation, where this usurpation was ordered, so fitting a place to awake the country to its dangers, and the people to the necessity of a peaceful preservation of their liberties?

That the duty to rebuke this daring and dangerous innovation and assault upon a peoples' liberties, is one high above party behest, we have noble evidences of in the Executive Message of the Governor of Pennsylvania, to the Legislature of that State in January 1871; and further, that the usurpation of power by the military is a tendency of the times, dangerous to the rights of a free people, which should be checked, in the manly arraignment by His Excellency, Gov. Palmer, of Illinois, of a highly distinguished Federal General, who had on the occurrence of the recent lamentable conflagration, in the chief city of that State, by illegally and unconstitutionally subjecting the city to military rule, caused the death of one of its most prominent and respected citizens and officials.

STATE HOUSE AND GROUNDS.

I desire very earnestly to invite the attention of your honorable body to the condition of the State House and its grounds. By but slight inspection you will readily perceive that it requires repairs of various kinds, not only for its more respectable and inviting appearance, but really for its preservation from further decay. The exterior of the building, particularly, demands immediate attention. The wood-work, in several places, should be replaced by new work; especially is this so of the cornices, which are, I understand, in a very dilapidated and dangerous condition. The walls, too, require repairs at as early a day as possible. The mortar has very generally fallen from the joints, leaving wide and unsightly spaces between the bricks, and every day invites further decay by the action of the weather. After these necessary repairs have been completed, the entire exterior should be covered with sufficient coats of paint, both for improvement in the appearance of the building and its preservation. For these reasons, and many others which could be given, I respectfully ask of your honorable body a liberal appropriation for the purposes mentioned. I feel assured that any outlay you may make in this direction will receive the approval of our people generally, who hold in such high esteem this noble old building, around which linger so many and interesting reminiscences of the past. Under the direction of Hon. A. Gassaway, Secretary of the Senate, the grounds have been tastefully laid out, by running walks, laying beds for flowers, &c., which give them a very different appearance from the unsightly hill of former times. Evergreens and shrubbery of various kinds adorn its face, and the general appearance of the entire surroundings invites and receives the attention and admiration of all visitors and strangers. But while much

has been done, more remains to be accomplished, and I would therefore ask of your honorable body an appropriation sufficient to continue those improvements.

DEATH OF EX-GOVERNOR PRATT.

It is not alone in the Senate Hall that death, which is said to "love a shining mark," has been busy within the last two years. Governor Pratt, the best services of whose life were given to the State, at the expense of his private fortune, and whose able administration may truly be said to have saved the State's credit at a time of great financial gloom and despondency, lies interred in the Annapolis Cemetery.

No monument covers his remains. It would be a slight but graceful acknowledgment to him for so aiding to preserve what to-day is the proud boast of every true Marylander, the fair fame of the State, were she to erect over his grave a fitting mausoleum to his courage, his talent, and his worth.

CONCLUSION.

My official relations to the State are about to close. In this, the last communication which I may probably send to the General Assembly, I take pleasure in acknowledging the uniform courtesy I have received from the Representatives of the people.

I acknowledge, with thankfulness, the fidelity, zeal, honesty and industry with which all the duties of their respective places have been discharged by the State officers at present associated with me.

And with a grateful heart do I say that the most pleasant retrospect and consummation of my administration is in, and due to the people of Maryland.

Faithful to every obligation imposed by Federal or State Laws, and sometimes under the most trying ordeals,

in no State in the Union probably has the same good order and good feeling prevailed among all classes of citizens. Burying the animosities naturally engendered by civil war, they have lived together as brothers in unity. Political asperities have not divided them. Each one's right to his own opinions has been recognized and respected—rendering a willing obedience to constituted authority, there has been no rioting, as in some of the Northern States, no charge or suspicion even, of the existence, within our borders, of any secret organization for personal or political intimidations, as is charged in some of the Southern States. The rights of the recently liberated colored man have been recognized by the Legislature, the Courts, and the people. He feels as secure in them as does his former master in his.

Having acted throughout my administration upon the declaration made at my inauguration, that I should "strive to be the Executive of the State, rather than the official of a party," I have received nothing but kind and generous treatment, even from those who differed with me politically.

Endeavoring faithfully to discharge the important duties confided to me, this is the manner in which I have been aided and strengthened by the people and their Representatives.

The prosperity of the State, and the best interests of her citizens, will always be near and dear to me, as I am sure they will be to each one of you.

My duties ended, yours are just commencing. Guided as you will be by principle and rectitude—looking only to the positive and permanent good of the State—listening to no allurements of policy or personal advantage—with our resources so varied and unrivalled, with our elements

of growth so added to by our great and increasing works of internal improvement, with our comprehensive system of free education, with our great water-powers and facilities, with our wonderful mineral wealth and fertility of soil, with a people intelligent, enterprising, virtuous and moral, I have unbounded faith in the future of Maryland.

ODEN BOWIE.